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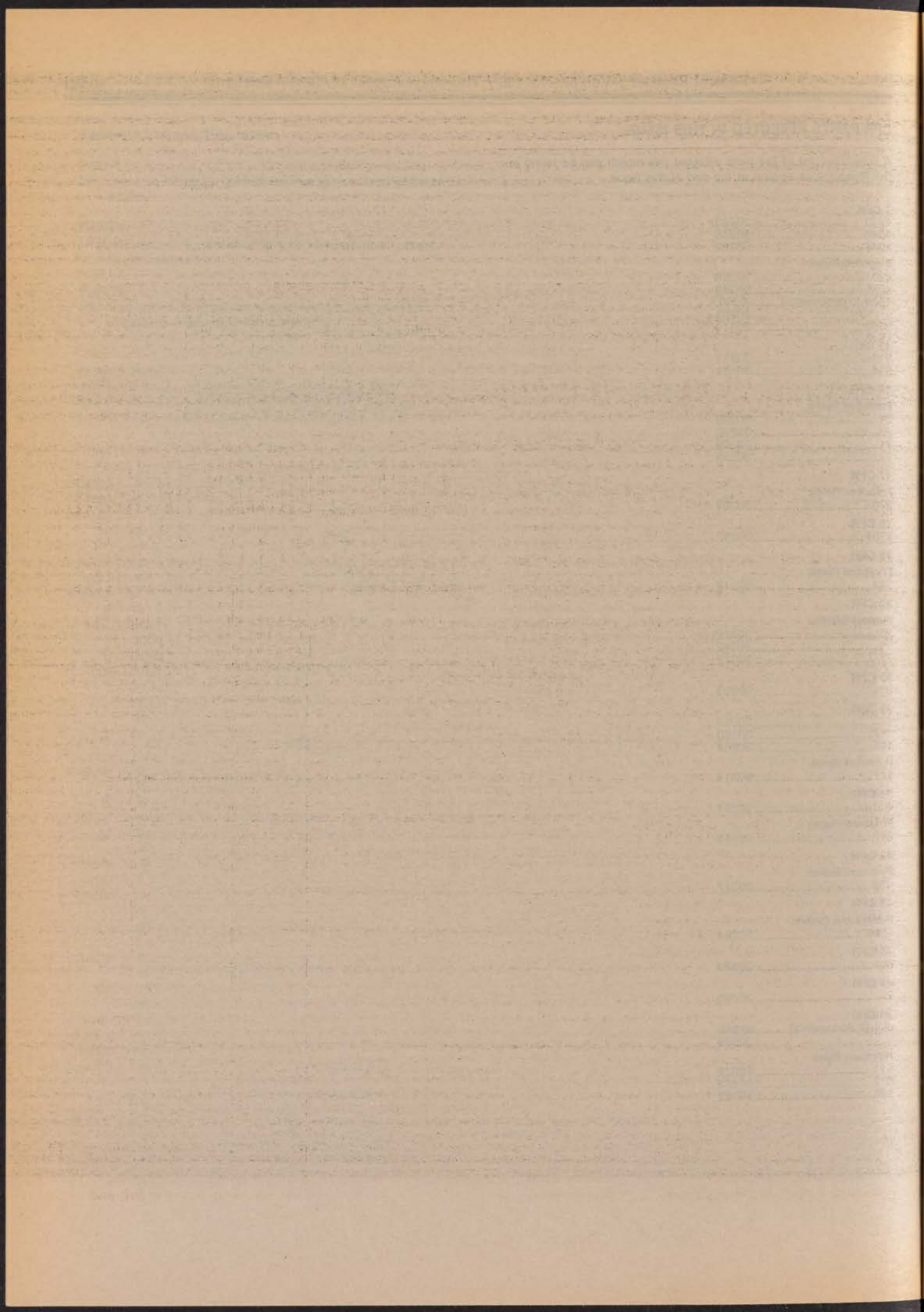
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

[No. LS-88-035]

Pork Promotion, Research, and Consumer Information Program; Amendments to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to amend the Pork Promotion, Research, and Consumer Information Order as proposed in the June 10, 1988, *Federal Register* to (1) require market agencies, which sell on behalf of a producer porcine animals used for breeding, to collect assessments on such animals and remit them to the National Pork Board; (2) modify the requirements for annual reports from organizations receiving funds distributed by the National Pork Board; (3) require the use of USDA data to determine the number of pork producers in each State when nominating producers by petition to the National Pork Producers Delegate Body; and (4) make a minor editorial change for clarification. These amendments clarify the intent of the Order, improve assessment collection procedures, and facilitate preparation and submission of reports.

DATE: Effective August 11, 1988.

ADDRESS: Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch, Livestock and Seed Division, Agricultural Marketing Service (AMS), USDA, Room 2610-S, Post Office Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch 202/447-2650.

SUPPLEMENTARY INFORMATION: This action reviewed under USDA procedures established to implement

Executive Order No. 12291 and Departmental Regulation No. 1512-1 and is hereby classified as a nonmajor rule under the criteria contained therein.

This action was also reviewed under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* This final rule (1) requires market agencies to collect assessments on porcine animals classed as breeding stock and remit them to the Board; (2) permits State pork producer associations receiving less than \$10,000 in assessments annually to submit unaudited annual financial statements to the Board; (3) specifies that the latest available USDA data will be used by the Department in determining the number of pork producers in each State for the purpose of nominating producers to the National Pork Producers Delegate Body; and (4) makes a clarifying editorial change in § 1230.58.

Most market agencies, i.e., livestock auction markets, commission firms who sell livestock on behalf of producers, would be classified as small businesses under the RFA.

Since the same form currently used by market agencies in reporting and remitting assessments to the Board on feeder pigs and slaughter hogs sold on behalf of producers will be used for breeding stock, this requirement to collect and remit assessments on breeding stock will not appreciably increase market agencies reporting and recordkeeping. Most of the breeding stock are sold through private sales in which the producer (seller) is required to remit the assessment, so the additional collection and remittance activity for market agencies will be minimal.

Modifying the requirements that annual financial reports for State pork producer associations be prepared by a certified public accountant will reduce the cost of reporting for State pork producer associations receiving less than \$10,000 in annual assessments. The cost savings will make increased funding available for financing promotion and research programs. Requiring the use of USDA data in connection with the National Pork Producers Delegate Body will not have any economic impact upon small entities. The data have been used by the Department to verify nominations of producers by petition as necessary during the Delegate Body nomination process since the Order was implemented.

For these reasons, the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic effect on a substantial number of small entities.

The information collection requirements contained in the provisions of the Pork Promotion, Research, and Consumer Information Order revised by this final rule have been previously approved by the Office of Management and Budget (OMB) and assigned OMB control number 0851-0151.

The Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801-4819) approved December 23, 1985, authorizes the establishment of a national pork promotion, research, and consumer information program. The program is funded by an assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork, and pork products. The final order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the *Federal Register* (51 FR 31898; as corrected at 51 FR 36383), and assessments began on November 1, 1986.

The Order requires that producers pay to the Board an assessment of 0.25 percent of the market value of each porcine animal upon sale. However, for purposes of collecting and remitting assessments, porcine animals are divided into three separate categories: (1) Feeder pigs, (2) slaughter hogs, and (3) breeding stock. The Order specifies that purchasers of feeder pigs and slaughter hogs shall collect an assessment on these animals if assessments are due. The Order further stipulates that for the purpose of collecting and remitting assessments, persons engaged as a commission merchant, auction market, or livestock market in the business of receiving such porcine animals for sale on commission for or on behalf of a producer shall be deemed to be a purchaser.

The procedures for collection and remittance of assessments are specified in § 1230.71 of the Order. Under that section, purchasers of porcine animals are required to collect assessments from producers upon the sale of porcine animals, if an assessment is due, and

remit such assessment to the Board by the 10th day of the month following the month in which porcine animals were marketed. In § 1230.71(b)(1) of the Order, a purchaser is any person buying feeder pigs or market hogs; and, for purposes of collection and remittance of assessments, any person engaged as a commission merchant, an auction market, or livestock market in the business of receiving porcine animals for sale on commission for or on behalf of a producer is a purchaser. That section did not provide for collection and remittance of assessments on breeding stock sold for or on behalf of a producer by a purchaser who is a commission merchant, auction market, or similar market agency. The Order does specify that producers remit assessments due on breeding stock upon sale. Even though most porcine animals marketed annually as breeding stock are sold through private sales, some producers market porcine animals used as breeding stock through market agencies. Therefore, to bring uniformity and consistency to the Order language for collecting and remitting assessments on all porcine animals sold through a market agency, § 1230.71 is revised to specify that those purchasers who are commission merchants, auction markets, or similar market agencies in the business of selling porcine animals for or on behalf of producers collect and remit assessments on such animals sold as breeding stock. Producers selling breeding stock through private sales will continue to remit assessments upon sale of such porcine animals.

Section 1230.74(b) of the Order requires that organizations receiving distributions of funds from the Board shall furnish the Board with an annual report prepared by a certified public accountant (CPA) of all funds distributed to such organizations. State pork producer associations receive a percentage of the annual net assessments collected in their State pursuant to § 1230.72 (a) and (b). As a result, these State associations are subject to this CPA audit provision of the Order. However, some of the smaller State pork producer associations receive relatively small amounts of assessments, and the cost of an annual report prepared by a CPA could represent a significant proportion of their total annual assessments. There were 45 State pork producer associations which received distributed assessments in 1987. The amount of annual assessments distributed ranged from less than \$1,000 to more than \$970,000. Thirteen States received less than \$10,000, and four of those States

received less than \$2,000. To minimize the cost of annual financial reports for the smaller States, the National Pork Board recommended that any State pork producer association receiving less than \$10,000 in distributed assessments annually be exempted from the required annual report prepared by a CPA and instead be permitted to submit to the Board an unaudited financial statement prepared by or for the association. Such unaudited financial statements would be certified by at least two members of the association. Additionally, each such State pork producer association would have to submit a CPA-audited annual financial statement at least once every 5 years or more frequently if the Board or the Secretary deemed it to be necessary. States receiving less than \$2,000 in distributed assessments will be audited by the Board once every 5 years in lieu of the annual financial statement prepared by a CPA every 5 years. Section 1230.74 (Prohibited use of distributed assessments) has been amended to include these provisions. Additionally, § 1230.74(b) is amended to specify that the annual report from State pork producer associations is a financial statement which is audited rather than prepared by a CPA.

It was also proposed that the latest available published USDA data be used to determine the number of pork producers in a State for purposes of determining the number of pork producer signatures needed for nominations of pork producers to the National Pork Producers Delegate Body by written petition. The Delegate Body is appointed each year by the Secretary from pork producers who are nominated by State pork producer associations or who are nominated by written petition. Members are appointed for a 1-year term. Under § 1230.32(b)(2), pork producers in a State may be nominated for appointment to the Delegate Body by written petition signed by 100 producers in that State or by 5 percent of the producers in that State, whichever number is less.

In the 1987 and 1988 nominations and appointments to the Delegate Body, the Department used, when necessary, data contained in the latest available issue of the "Hogs and Pigs" report prepared by USDA's Agricultural Statistics Board, National Agricultural Statistics Service, to determine the number of pork producer signatures needed. That report enumerates the number of farming operations with hogs in each State for a calendar year. Section 1230.32(b)(2) has been amended to require that the number of pork producers in a State will

be determined by the Department based on such latest available information.

This rule also makes an editorial change in § 1230.58(g) which delineates the powers and duties of the National Pork Board. The phrase, "To appoint or employ such persons as staff * * *," in that section has been revised to read, "To appoint or employ staff persons * * *." This change in the wording of this phrase eliminates the ambiguity in paragraph (g) but does not change the Board's powers conferred in that subsection.

The proposed rule requested comments from interested persons by July 11, 1988. The Department received 14 comments—one from an individual pork producer; one from the National Pork Board; one from a national pork producer organization; and 11 from State pork producer associations. The individual commentator expressed opposition to the Order but did not address the proposed changes. The other 13 commentators were in favor of the proposed changes and most expressed the opinion that the proposed changes would clarify the intent of the Order and facilitate more efficient collection of assessments and preparation and submission of reports.

It is found that good cause exists for not postponing the effective date of these revisions until 30 days after publication in the *Federal Register* (5 U.S.C. 553). The amendments clarify the intent of the Order, improve assessment collection procedures, and facilitate the preparation and submission of reports. As such, these changes should be implemented as soon as possible. These changes do not require additional time for compliance with the amended provisions. Further, all the comments received specifically addressing the proposed changes were in support of such changes. Accordingly, these changes should become effective upon publication.

List of Subjects in 7 CFR Part 1230

Administrative Practice and Procedure, Advertising, Agricultural Research, Marketing Agreement, Meat and Meat Products, Pork and Pork Products.

For reasons set forth in the preamble, 7 CFR, Part 1230, is amended as set forth below:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801-4819.

2. Revise § 1230.32(b)(2) to read as follows:

§ 1230.32 Conduct of election.

(b) * * *

(2) The number of pork producers in a State shall be determined by the Department based on the latest available Department information, which tabulates by State the number of farming operations with porcine animals.

3. Revise § 1230.58(g) to read as follows:

§ 1230.58 Powers and duties of the Board.

(g) To appoint or employ staff persons as it may deem necessary, to define the duties and determine the compensation of each, to protect the handling of Board funds through fidelity bonds, and to conduct routine business.

4. Section 1230.71(b)(2), (b)(3), and (b)(4) are redesignated as (b)(3), (b)(4), and (b)(5), respectively, and a new (b)(2) added to read as follows:

§ 1230.71 [Amended]

(b) * * *

(2) Assessments on porcine animals raised as breeding stock which are sold by a commission merchant, auction, market, or livestock market in the business of receiving such porcine animals for sale on commission for or on behalf of a producer shall be collected and remitted by the commission merchant, auction market, or livestock market selling such porcine animals.

5. Section 1230.74(b) is revised and a new (c) is added to read as follows:

§ 1230.74 Prohibited use of distributed assessments.

(b) Except as provided for in paragraph (c) of this section, organizations receiving distributions of assessments from the Board shall furnish the Board with an annual financial statement audited by a certified public accountant of all funds distributed to such organization pursuant to this subpart and any other reports as may be required by the Secretary or the Board in order to verify the use of such funds.

(c) State pork producer associations as defined in § 1230.25 receiving distributions of assessments pursuant to § 1230.72 which receive less than \$10,000 in assessments annually may satisfy the requirements of paragraph (b) of the

section above by providing unaudited annual financial statements to the Board prepared by State association staff members or individuals who prepare annual financial statements for the State association provided that such financial statements are attested to and certified by two members of the State associations. Notwithstanding any provisions herein to the contrary, State associations receiving less than \$10,000 in distributed assessments annually, which submit unaudited annual financial statements to the Board, shall be required to submit an annual financial statement audited by a certified public accountant at least once every 5 years or more frequently if deemed necessary by the Board or the Secretary. If State pork producer associations receive less than \$2,000 in distributed assessments annually, the Board may elect to conduct its own audit of those State associations annual financial statements every 5 years in lieu of the required financial statements.

Done at Washington, DC, on August 3, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88-17917 Filed 8-10-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1942

Industrial Development Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends the Agency's policies and procedures governing the administration of Industrial Development Grants. This action is necessary to comply with the Omnibus Budget Reconciliation Act of 1987 and the continuing resolution for 1988, which allows private nonprofit organizations to participate with public agencies as grant recipients and expands the use of grant funds to include the financing of small emerging rural businesses. The net effect of this action will result in enterprise development and job creation in distressed rural communities.

EFFECTIVE DATE: August 11, 1988.

FOR FURTHER INFORMATION CONTACT: Frederick R. Young, Branch Chief, Community Facilities Division, Farmers Home Administration, U.S. Department of Agriculture, Room 6316, South

Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250; Telephone: (202) 383-9699.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Department Regulation 1512-1 which implements Executive Order 12291, and has been determined to be nonmajor since the annual effect on the economy is less than \$100 million and there will be no increase in costs or prices for consumers, individual industries, organizations, governmental agencies or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Public reporting burden for this collection of information is estimated to vary from 30 minutes to 40 hours per response, with an average of 2 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Environmental Impact Statement

This document has been reviewed in accordance with FmHA Instruction 1940-G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

The Administrator, Farmers Home Administration, has determined this action will not have a significant economic impact on a substantial number of small entities, because the action, will not affect a significant number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

Program Affected

This program, Industrial Development Grants, is listed in the Catalog of Federal Domestic Assistance under Number 10.424. The FmHA program and projects which are affected by this instruction are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. FmHA conducts intergovernmental consultation in the manner delineated in FmHA Instruction 1901-J.

Comments

A proposed rule was published in the *Federal Register* (53 FR 17953) on May 19, 1988, and invited comments for 30 days ending June 20, 1988. Four comments were received by the close of business on June 20, 1988. The comments were considered in developing the final rule. The following is a discussion of comments received:

One respondent commented that it is not clear that the establishment of a revolving fund is an eligible grant purpose under § 1942.306. The Agency reviewed this comment and determined that the term "finance" in this section means that grant funds may be used by an approved Grantee to make loans to develop private business enterprises. This is the establishment of a revolving loan fund. Therefore, the Agency does not feel further clarification is necessary in this particular section.

One respondent commented that priority ranking/scoring should not be an appealable item. The Agency reviewed this comment and determined that priority ranking of an application requires judgment in the analysis of some of the ranking factors. Since judgment enters into the decision making process, the Agency feels this item must continue to be an appealable item and, therefore, no change is necessary.

One respondent commented the Agency should change the proposed rule to (1) establish how long a priority scoring is valid, and (2) to subject preapplications/applications to a second ranking when all information is not received in a given time period. The Agency reviewed this comment and determined that priority scoring does not have an adverse affect on an application until a State or the National Office is making a determination of projects to be funded in a funding cycle. Priority ranking is only utilized during the selection for funding process. If applicants are not processing an application in a timely manner, there are administrative remedies available which enable the approval official to terminate

grant processing. Therefore, the Agency has made no change in this provision.

Two respondents indicated that the proposed § 1942.305(b)(3)(iii) provided grant selection priority points for experience in administering a rural economic development program and stated that few units of general purpose local governments have experience in administering a rural economic development program. One of these respondents also indicated that our proposal was unclear as to whether FmHA would give points for successful experience or unsuccessful experience. FmHA is revising this section to clarify that the experience should be successful to receive points in this area.

One of the respondents also commented that the requirement to provide past experience information with the application as proposed in § 1942.311(a)(2) was also biased against units of general purpose local governments.

The Agency feels that to successfully carry out the grant purposes of this program, several factors must be considered, as set forth under the selection priorities. Successful experience is one of several areas FmHA will consider in rating applications. The Agency does not feel that these requirements are biased against general purpose local governments.

A respondent indicated that under § 1942.305(b)(3)(v) concerning grant selection priority points, the criteria for discretionary points is unclear. The proposed rule reflects that in certain cases FmHA may assign points in addition to those set forth in § 1942.305(b)(3)(i) through (iv). Examples of those certain cases when FmHA may assign discretionary points are set forth in § 1942.305(b)(3)(v) are: Geographic distribution of funds, substantial employment improvement, or mitigation of economic distress of a community. FmHA has determined that the criteria are sufficiently clear. The Agency, however, is changing the responsibility for granting discretionary points from the State Director to the Administrator.

Two respondents suggested eliminating the proposal of granting selection priority points to applicants that are units of general purpose government. This suggestion is being adopted.

One respondent commented that proposed § 1942.305(b)(3)(iii) was unclear as to who determines if experience is adequate to grant selection priority points. The Agency has determined that the regulation clearly states that the State Director will rate applications and, therefore, feels

further clarification is unnecessary. The Agency, however, is changing the cited section to read, "successful experience" rather than "substantial experience."

One respondent felt that in the proposed § 1942.305(b)(3)(iii), the granting of selection priority points to applicants located in communities under 25,000 population would exclude clearly rural areas. The use of population density was suggested. The policy of using population rather than population density is legislatively mandated and the Agency cannot administratively change this policy.

Two respondents feel that the proposal of allocating funds to the states be eliminated because of the limited funds available to the program. One of these respondents also suggested transferring all the responsibilities of rating applications to the National Office. The Agency is partially adopting this suggestion by transferring the responsibility of assigning discretionary points to the Administrator. The Agency is also modifying the proposed rule to eliminate allocation of funds to the states.

One respondent felt a definition of industrial or business sites is needed. The Agency feels that these are commonly used terms in the industry and clarification is not needed.

One respondent suggested expanding the use of technical assistance for proposed Grantee projects to include local entities who would identify potential in a modified rural business incubator approach. The Agency feels that this is beyond the intent of the law.

The Agency is adopting the proposed rule with the following changes:

The Agency has changed the proposed rule under § 1942.305(b)(2) to remove the policy of allocating funds to the States. The proposal to allocate funds is considered impractical considering the limited funds available to the program.

The Agency has changed the proposed rule under § 1942.305(b)(3) to transfer from the State Directors to the Administrator, the responsibility of granting discretionary points to applications. This was determined necessary to obtain geographic distribution of the funds.

The Agency has changed the proposed rule under Section § 1942.305(b)(3)(ii)(B) to refer to the Community Services Block Grant Act (42 U.S.C. 9902 (2)). This section under the proposed rule referred to Office of Management and Budget under section 624 of EO Act of 1964. This change is necessary to be consistent with other FmHA Community Programs. This information is presently available in FmHA Offices.

Section §1942.305(b)(3)(iii) is changed to modify the experience requirement to limit the granting of selection priority points to those applicants with successful experience in administering a rural economic development program. This action is needed to avoid the situation of granting ranking points to an applicant with unsuccessful experience.

The Agency has changed the proposed rule under §1942.305(b)(3)(iv) to remove the policy of considering extra selection priority points when grant funds will be used to develop industrial or business sites and for applicants that are units of general purpose local government. This action was necessary to remove potential advantage for specific types of grant activity or specific activity.

The Agency changed the proposed rule under §1942.315 to remove a requirement for a grant agreement and to state funds are expended for authorized purposes, and that the terms and requirements as prescribed in Parts 3015 and 3016 of 7 CFR must be complied with. This action is necessary to further clarify and eliminate duplication of presently published requirements.

This final rule contains minor changes to 7 CFR Part 1942-G as listed in the above summary of primary changes. These changes are items of internal management only and do not impact on the public.

List of Subjects in 7 CFR Part 1942

Business and industry, Grant programs—Housing and community development, Industrial park, Rural areas.

According to Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1942—ASSOCIATIONS

1. The authority citation for Part 1942 is revised to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart G—Industrial Development Grants

2. Section 1942.301 is revised to read as follows:

§ 1942.301 Purpose.

This subpart outlines Farmers Home Administration (FmHA) policies and authorizations and sets forth procedures for making grants to finance and facilitate development of private business enterprises.

3. Section 1942.302 is revised to read as follows:

§ 1942.302 Policy.

(a) The grant program will be used to support the development of small and emerging private business enterprises in rural areas.

(b) FmHA officials will maintain liaison with officials of other federal, state, regional and local development agencies to coordinate related programs to achieve rural development objectives.

(c) FmHA officials shall cooperate with appropriate State agencies in making grants that support State strategies for rural area development.

(d) Funds allocated for use in accordance with this Subpart are also to be considered for use of Indian tribes within the State regardless of whether State development strategies include Indian reservations within the State's boundaries. Indians residing on such reservations must have equal opportunity along with other rural residents to participate in the benefits of these programs. This includes equal application of outreach activities of FmHA County and District Offices.

4. Section 1942.304 is amended by revising paragraph (a) and adding paragraphs (f), (g), and (h) to read as follows:

§ 1942.304 Definitions.

(a) *Industrial Development (ID) grants.* Grants made to finance and facilitate development of small and emerging private business enterprises in rural areas. Grants are made from FmHA funds under authority of the Consolidated Farm and Rural Development Act, as amended, section 310B (7 U.S.C. 1932).

(f) *Technical Assistance.* A function performed for the benefit of a grantee project and is a problem solving activity such as market research, product and/or service improvement, feasibility study, etc.

(g) *Project.* The result of the use of program funds, i.e., a facility, whether constructed by the applicant or a third party from a loan or grant made with grant funds; technical assistance; startup operating costs or working capital. A party from a loan or grant made with grant funds; technical assistance; startup operating costs or working capital. A revolving fund established in whole or in part with grant funds will also be considered a project for the purpose of Intergovernmental and Environmental Review under § 1942.310 paragraphs (b) and (c), as well as the specific uses of the revolving funds.

(h) *Small and emerging private business enterprise.* Generally any private business which will employ 50 or

less new employees and has less than \$1.0 million in projected gross revenues and has or will utilize technological innovation and commercialization of (i) new products that can be used in rural areas and (ii) new processes that can be used in such production.

5. Section 1942.305 is amended by revising paragraphs (a)(1) and (b) to read as follows:

§ 1942.305 Eligibility and priority.

(a) *Eligibility.* (1) ID grants may be made to public bodies and private nonprofit corporations serving rural areas. Public bodies include states, counties, cities, townships, and incorporated towns and villages, boroughs, authorities, districts, and Indian tribes on Federal and State reservations and other Federally recognized Indian Tribal groups in rural areas. The State Director will proceed as follows in rural area determinations: When the FmHA State Director determines an area to be urbanized or urbanizing, the State Director must then determine the population density per square mile. If the area appears to be eligible, the State Director will request the National Office to provide the correct density figure. All such density determinations will be made on the basis of minor civil division or census county division as used by the Bureau of the Census. In making the density calculations, large nonresidential tracts devoted to urban land uses such as railroad yards, airports, industrial sites, parks, golf courses, and cemeteries of land set aside for such purposes will be excluded.

(b) *Project selection process.* The following paragraphs indicate items and conditions which must be considered in selecting applications for further development. When ranking eligible applications for consideration for limited funds, FmHA officials must consider the priority items met by each application and the degree to which those priorities are met, and apply good judgment.

(1) *Applications.* The application and supporting information submitted with it will be considered in determining the proposed project's priority for available funds.

(2) *State Office review.* All applications will be reviewed and scored for funding priority. The State Director will request funds from the National Office. Such requests will be considered along with all others on hand. If an application cannot be funded, the State Director will be notified. Eligible applicants that cannot

be funded should be advised by the State Director that funds are not available, and requested to advise whether they wish to have their application maintained in an active file for future consideration.

(3) *Selection priorities.* The priorities described below will be used by the State Director to rate applications. Points will be distributed as indicated in paragraphs (b)(3)(i) through (iv) of this section. A copy of the score sheet should be placed in the case file for future reference.

(i) *Population.* Proposed project(s) will primarily be located in a community of under 25,000 population—10 points.

(ii) *Economic conditions.*

(A) Proposed project(s) will primarily be located in areas where the unemployment rate (1) exceeds the State rate by 25% or more—20 points, (2) exceeds the State rate by less than 25%—10 points, (3) is equal to or less than the State rate—0 points.

(B) Proposed project(s) will primarily be located in areas where Median Household Income (MHI) as prescribed by section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) for a family of 4 for the State is: (1) Less than poverty line—25 points, (2) more than poverty line but less than 85% of State MHI—15 points, (3) between 85% and 100% of State MHI—10 points, (4) equal or greater than State MHI—0 points.

(iii) *Experience.* Applicant has successful experience in administering a rural economic development program—15 points.

(iv) *Other.*

(A) Applicant has industry or business committed to locate in the sites—25 points.

(B) Grant request contains evidence of substantial commitment of funds from nonfederal sources for proposed projects—25 points.

(v) *Discretionary.* In certain cases the Administrator may assign up to 50 points in addition to those that may be assigned in paragraphs (b)(3)(i) through (iv) of this section. Use of these points must include a written justification from the State Director which will be based on factors such as geographic distribution of funds, criteria which will result in substantial employment improvement, mitigation of economic distress of a community through the creation or salvation of jobs or emergency situations.

6. Section 1942.306 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1942.306 Purposes of grants.

(a) Grant funds may be used to finance and develop small and emerging private business enterprises in rural areas including, but not limited to, the following:

(1) Acquisition and development of land, easements and rights-of-way.

(2) Construction, conversion, enlargement, repairs or modernization of buildings, plants, machinery, equipment, access streets and roads, parking areas, utilities, and pollution control and abatement facilities.

(3) Startup operating cost and working capital.

(4) Technical assistance for proposed grantee projects.

(5) Reasonable fees and charges for professional services necessary for the planning and development of the project including packaging. Services must be provided by individuals licensed in accordance with appropriate State accreditation associations.

(6) Refinancing of debts exclusive of interest incurred by or on behalf of an association before an application for a grant when all of the following exist:

(i) The debts were incurred for the facility or part thereof or service to be installed or improved with the grant, and

(ii) Arrangements cannot be made with the creditors to extend or modify the terms of the existing debt.

(b) Grants may be made only when there is a reasonable prospect that they will result in development of small and emerging private business enterprises.

7. Section 1942.307 is revised to read as follows:

§ 1942.307 Limitations on use of grant funds.

(a) Funds will not be used:

(1) To produce agricultural products through growing, cultivation and harvesting either directly or through horizontally integrated livestock operations except for commercial nurseries or timber operations.

(2) To finance comprehensive areawide type planning. This does not preclude the use of grant funds for planning for a given project.

(3) For loans by grantees when the rates, terms and charges for those loans are not reasonable or would be for purposes not eligible under § 1942.306 of this subpart.

(b) Funds will not be used for any project which will require more than \$500,000 in FmHA grant funds available under this subpart.

(c) At least 51 percent of the outstanding interest in the project has membership or is owned by those who

are either citizens of the United States or reside in the United States after being legally admitted for permanent residence.

8. Section 1942.310 is amended by revising paragraphs (b) and (d); removing paragraph (e); redesignating paragraphs (f), (g), and (h) as paragraphs (e), (f), and (g); and by adding new paragraphs (h) and (i) to read as follows:

§ 1942.310 Other considerations.

(b) *Environmental requirements.* (1) *General applicability.* Unless specifically modified by this section, the requirements of Subpart G of Part 1940 of this Chapter apply to this Subpart. FmHA will give particular emphasis to ensuring compliance with the environmental policies contained in §§ 1940.303 and 1940.304 in Subpart G of Part 1940 of this Chapter. Although the purpose of the grant program established by this Subpart is to improve business, industry and employment in rural areas, this purpose is to be achieved, to the extent practicable, without adversely affecting important environmental resources of rural areas such as important farmlands and forest lands, prime rangelands, wetlands and floodplains. Prospective recipients of grants, therefore, must consider the potential environmental impacts of their applications at the earliest planning stages and develop plans, grants and projects that minimize the potential to adversely impact the environment.

(2) *Technical assistance.* The application for a technical assistance project is generally excluded from FmHA's environmental review process by § 1940.310(e)(1) of Subpart G of Part 1940 of this Chapter. However, as further specified in § 1940.330 of Subpart G of Part 1940 of this Chapter, the grantee for a technical assistance grant, in the process of providing technical assistance, must consider the potential environmental impacts of the recommendations provided to the recipient of the technical assistance.

(3) *Applications for Direct Construction Project.* The application by a potential grantee who intends to directly use grant funds for a nontechnical assistance project, such as a construction project, shall be reviewed and processed under the applicable requirements of Subpart G of Part 1940 of this Chapter.

(4) *Applications for Grants to Provide Financial Assistance to Third Party Recipients.* As part of the preapplication, the applicant must provide a complete Form FmHA 1940-

20. "Request for Environmental Information," for each project specifically identified in its plan to provide financial assistance to third parties who will undertake eligible projects with such assistance. FmHA will review the preapplication, supporting materials and any required Forms FmHA 1940-20 and initiate a Class II assessment for the preapplication. This assessment will focus on the potential cumulative impacts of the projects as well as any environmental concerns or problems that are associated with individual projects and that can be identified at this time from the information submitted. Because FmHA's approval of this type of grant application does not constitute FmHA's commitment to the use of grant funds for any identified third party projects (see § 1942.316 of this Subpart), no public notification requirements for a Class II assessment will apply to the preapplication. After the grant is approved, each third party project to be assisted under the grant will undergo the applicable environmental review and public notification requirements in Subpart G of Part 1940 of this Chapter, prior to FmHA providing its consent to the grantee to assist the third party project.

(5) *Combined Applications.* Whenever an applicant files a preapplication that includes a direct construction project and a plan to provide financial assistance to third parties who will undertake eligible projects, the following environmental requirements will apply.

(i) The proposed direct construction project(s) will be reviewed under the requirements of paragraph (b)(3) of this section prior to authorization of the application.

(ii) The plan to provide financial assistance to third parties will be reviewed and processed under the requirements of paragraph (b)(4) of this section. Additionally, the Class II assessment required for the plan shall address and analyze the cumulative impacts of all proposed projects, direct or third party, identified within the preapplication.

(d) *Management assistance.* Grant recipients will be supervised as necessary to assure that projects are completed in accordance with approved plans and specifications and that funds are expended for approved purposes. Grants made under this Subpart will be administered under and are subject to 7 CFR 3015 and 7 CFR 3016, as appropriate, and established FmHA guidelines.

(h) *Flood or mudslide hazard area precautions.* If the grantee financed project is in a flood or mudslide area, then flood or mudslide insurance must be provided.

(i) *Termination of Federal requirements.* Once the grantee has provided assistance to projects from a revolving fund, in an amount equal to the grant provided by FmHA, the requirements imposed on the grantee shall not be applicable to any new projects thereafter financed from the revolving fund. Such new projects shall not be considered as being derived from Federal funds.

9. Section 1942.311 is amended by removing paragraph (b) and redesignating paragraph (c) as (b), and by revising paragraph (a) to read as follows:

§ 1942.311 Application processing.

(a) *Preapplications and applications.*

(1) The application review and approval procedures outlined in § 1942.2 of Subpart A of Part 1942 of this Chapter will be followed as appropriate. The State Director should assist the applicant in application assembly and processing. If the application is for the development of facilities, the applicant shall use Form AD-624, "Application for Federal Assistance (for Construction Programs)." If the application is for the financing of facilities, the applicant shall use Form AD-623 "Application for Federal Assistance (NonConstruction Programs)."

(2) Applications which propose to establish revolving loan programs shall contain detail on the applicant's experience operating a revolving loan program, proposed projects to be funded from the revolving fund, applicant's financial ability to administer a revolving fund, need for a revolving fund, and other funds available to leverage funds made available under this program.

(3) Each application for assistance will be carefully reviewed in accordance with the priorities established in § 1942.305(b)(3) of this Subpart. A priority rating will be assigned to each application. Applications selected for funding will be based on the priority rating assigned each application and the total funds available. All applications submitted for funding should contain sufficient information to permit FmHA to complete a thorough priority rating.

§§ 1942.312 and 1942.313 [Removed and Reserved]

10. Sections 1942.312 and 1942.313 are removed and reserved.

11. Section 1942.314 is added and reads as follows:

§ 1942.314 Scope of Work.

For applications involving a loan to a third party, the applicant shall develop a Scope of Work. As a minimum the Scope of Work should contain the following:

(a) The specific purposes for which grant funds will be utilized.

(b) Timeframes or dates by which action surrounding the use of funds will be accomplished.

(c) Who will be carrying out the purpose for which the grant is made.

(d) How the grant purposes will be accomplished.

12. Section 1942.315 is amended by revising paragraph (b) to read as follows:

§ 1942.315 Docket preparation and Letter of Conditions.

(b) The State Director or the State Director's designated representative will prepare a Letter of Conditions outlining the conditions under which the grant will be made. It will include those matters necessary to assure that the proposed development is completed in accordance with approved plans and specifications, that grant funds are expended for authorized purposes, and that the terms of the Scope of Work and requirements as prescribed in Parts 3015 and 3016 of 7 CFR are complied with. The Letter of Conditions will be addressed to the applicant, signed by the State Director or other designated FmHA representative, and mailed or handed to appropriate applicant officials. Each Letter of Conditions will contain the following paragraphs.

"This letter established conditions which must be understood and agreed to by you before further consideration may be given to the application."

"This letter is not to be considered as grant approval nor as a representation as to the availability of funds. The docket may be completed on the basis of a grant not to exceed \$ _____."

"Please complete and return the attached Form FmHA 442-46, 'Letter of Intent to Meet Conditions,' if you desire further consideration be given your application."

Other items in the Letter of Conditions should include those relative to:

Maximum amount of grant, contributions, interim financing, final plans and specifications, construction contract documents and bidding, required project audit, evidence of compliance with all applicable Federal, State, and local requirements, closing instructions, DOL certifications, compliance with any required environmental mitigation measures, and

other requirements including those of Regional Commissions when a grant is being made by a Regional Commission.

13. Section 1942.316 is amended by revising the heading and paragraph (c) to read as follows:

§ 1942.316 Grant approval, fund obligation and third party financial assistance.

(c) *Third party financial assistance.* Approval of a grant to an applicant who will use grant funds to provide financial assistance to a third party does not constitute approval of the projects financed by the grantee. The review, approval and disbursement of funds for specific projects financed by grantees will be completed in accordance with applicable sections of this Subpart.

14. Sections 1942.317, 1942.318, 1942.319, and 1942.320 are removed and reserved.

§§ 1942.317, 1942.318, 1942.319, and 1942.320 [Removed and Reserved]

§ 1942.322 [Removed and Reserved]

15. Section 1942.322 is removed and reserved.

§ 1942.350 [Redesignated as § 1942.349]

16. Section 1942.350 is redesignated as § 1942.349 and is revised to read as follows:

1942.349 Forms, guides, and attachments.

Exhibit A of Subpart H of Part of 1942

of this Chapter, Guides 1 and 2 of this Subpart, Attachment 1 and Forms referenced (all available in any FmHA office) are for use in administering ID Grants.

17. New § 1942.350 is added to read as follows:

§ 1942.350 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575-0132. In accordance with 5 CFR Part 1320 summarized below is the annualized public reporting burden for this regulation.

7 CFR 1942-G INDUSTRIAL DEVELOPMENT GRANTS—JULY 1988

Section of regulations (A)	Title (B)	Form No. if any (C)	Estimated No. of respondents (D)	Reports filed annually (E)	Total annual responses (d) x (e) (F)	Estimated No. of man-hrs. per response (G)	Estimated total man hours (f) x (g) (H)
Reporting Requirements—Forms Approved Under Other OMB Numbers							
1942.310(b)(4).....	Request for Environmental Information.	1940-20 (0575-0029).					
1942.310(c)(1)(ii).....	Certificate of Non Relocation and Market Capacity Information Report.	449-22 (0575-0029).					
1942.311(a).....	Application for Federal Assistance (for Construction Programs).	AD-624 (0348-0006).	25	On occasion	25	1	25
1942.311(a).....	Application for Federal Assistance (for Non Construction Programs).	AD-623 (0348-0006).	5	On occasion	5	1	5
1942.315(b).....	Letter of Intent to meet Conditions.	FmHA 442-46 (0575-0015).					
Attachment 1, Sec. A II B.....	Preapplication for Federal Assistance.	AD-621 (0348-0006).	40	On occasion	40	1	40
Attachment 1.....	Equal Opportunity Agreement.....	FmHA 400-1 (0575-0018).					
Attachment 1.....	Assurance Agreement.....	FmHA 400-4 (0575-0018).					
Attachment 1, Sec. A II I (a).....	Request for Advance or Reimbursement.	SF-270 (0348-0006).	30	12.....	360	1	360
Attachment 1, Sec. A II J.....	Financial Status Report.....	SF-269 (0348-0006).	30	4.....	120	1.5	180
Attachment 1, Sec. A II J.....	Federal Cash Transaction Report.....	SF-272 (0348-0006).	30	12.....	360	1.5	540

Reporting Requirements—No Forms

1942.310 (b) 4.....	Plan to Provide Financial Assist. to Third Parties.	Written	10	On occasion	10	16	160
1942.311(a)(2) and Attachment 1, Sec. A II 2.....	Brief Narrative	Written	40	On occasion	40	4	160
1942.314 Attachment 1, Sec. A II B.....	Scope of Work	Written	10	On occasion	10	40	400
Attachment 1, Sec. A II A.....	Intergovernmental Consultations	Written	40	On occasion	40	2	80
Attachment 1, Sec. A II E.....	Appraisal Report	Written	5	On occasion	5	4	20
Attachment 1, Sec. A II H 4.....	Request for Appeal.....	Letter	10	On occasion	10	0.5	5
Attachment 1, Sec. A II I (b).....	Evidence of Fidelity Bond Insurance.	Policy	15	On occasion	15	1	15

7 CFR 1942-G INDUSTRIAL DEVELOPMENT GRANTS—JULY 1988—Continued

Section of regulations	Title	Form No. if any	Estimated No. of respondents	Reports filed annually	Total annual responses (d) x (e)	Estimated No. of man-hrs. per response	Estimated total man hours (f) x (g)
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
Attachment 1, Sec. A II 1	Project Performance Report	Written	15	On occasion	60	2	120
Attachment 1, Sec. A II K	Audit Report	Written	30	On occasion	30	6	180
Record Keeping Requirements							
Attachment 1, Sec. B III H	Financial Records	Records	30			1	30
Attachment 1, Sec. B III (A) (3)	Property Records	Records	30			3	90
	xe	xe		xe	¹ 1,135		² 2,390

¹ Docket totals.² Total hours.

18. Exhibits A and B to Subpart G of Part 1942 are removed.

Dated: July 20, 1988.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 88-18211 Filed 8-10-88; 8:45 am]

BILLING CODE 3410-07-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 510a

[No. 88-646]

Use of Penalty Mail in the Location and Recovery of Missing Children

Date: August 1, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: In response to Congressional legislation, the Federal Home Loan Bank Board ("Board") is amending its regulation authorizing the use of official United States Government mail franked for Board use ("penalty mail") to assist in the recovery of missing children.

EFFECTIVE DATE: August 11, 1988.

FOR FURTHER INFORMATION CONTACT: Charles J. Szlenker, Attorney, Office of General Counsel, (202) 377-6664, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On August 9, 1985, Congress enacted Pub. L. 99-87, which added a new section 3220 to title 39, United States Code. That provision authorized federal agencies to place photographs and biographical data of missing children on penalty mail in accordance with guidelines promulgated by the Department of Justice. Section 5 of Pub. L. No. 99-87 (See 39 U.S.C. 3220 n. "Termination Date" (Supp. III 1985)), stated that this authorization would expire two and one-

half years after its enactment. The Board regulations implementing 39 U.S.C. 3320 therefore stated that they would terminate on February 9, 1988, in accordance with the terms of the statute. However, on December 22, 1987, Congress amended Pub. L. No. 99-87 to provide that the use of missing children photographs and biographical data on penalty mail would be continued until December 31, 1992. The amendment, at section 627(a) of the Treasury, Postal Service and General Government Appropriations Act of 1988, was enacted as part of House Joint Resolution No. 395, Continuing Appropriations, Fiscal Year 1988, Pub. L. No. 100-202, section 101(m), 101 Stat. 1329, 1329-430 (1987). Consequently, the Board is amending 12 CFR 510a.6 to provide that the Board's use of penalty mail in the location of missing children shall continue until December 31, 1992.

Pursuant to 12 CFR 508.11 and 508.14, the Board finds that, because this amendment relates to Board procedure and practice, notice and public procedure are unnecessary, as is the 30 day delay of the effective date.

List of Subjects in 12 CFR Part 510a

Missing children, Penalty mail, Reporting and record keeping requirements.

Accordingly, the Board hereby amends Part 510a, Subchapter A, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER A—GENERAL

PART 510a—USE OF PENALTY MAIL IN THE LOCATION AND RECOVERY OF MISSING CHILDREN

1. The authority citation for Part 510a continues to read as follows:

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); Sec. 402, 48 Stat. 1256, as amended (12 U.S.C. 1725); Sec. 1, 99 Stat. 290, as amended (39 U.S.C. 3220); Reorg. Plan No. 3 of 1947, 3 CFR, 1943-1948 Comp., p. 1071.

2. Revise § 510a.6 to read as follows:

§ 510a.6 Expiration date.

This part is effective May 8, 1987, and shall cease to be effective upon the close of the Board's business on December 31, 1992.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Assistant Secretary.

[FR Doc. 88-18058 Filed 8-10-88; 8:45 am]

BILLING CODE 6720-01-M

12 CFR Part 524

[No. 88-645]

Operations of the Banks

Date: August 1, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is amending its regulation pertaining to the preparation and submission of budgets by the Federal Home Loan Banks ("Banks"). The Board is removing the requirement that a Bank submit a certificate of compliance to the Board along with its budget. This will remove a requirement which the Board feels is no longer necessary.

EFFECTIVE DATE: The regulation is effective August 11, 1988.

FOR FURTHER INFORMATION CONTACT: William Carey, Director, Bank Liaison Division, Office of District Banks, (202) 377-6656; or Charles Szlenker, Attorney, Office of General Counsel, (202) 377-6664, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: 12 CFR 524.6 requires each Federal Home Loan

Bank to submit, concurrently with its budget, a certificate of compliance signed by the Bank's president stating that the Bank has complied with the provisions of Subchapter B of the Board's regulations (12 CFR Parts 521-535). Beginning in 1979, the Board instituted an alternative method of ascertaining a Bank's compliance with Board regulations, policies, and rules, including those in Subchapter B, through establishment of internal auditors and uniform charters for Bank audit committees. Board Res. No. 86-329 (April 1, 1986). These charters require the Banks to submit periodic internal audit reports to the Board. These reports must include evidence of the Banks' compliance with laws, regulations, policies, plans, procedures, ethical standards, and public responsibilities.

Furthermore, the Banks' audit committees and internal auditors coordinate the investigations for conflict of interest or unethical conduct at the Banks with the Board's Office of Inspector General. These Bank internal audits must conform with auditing standards promulgated by the American Institute of Certified Public Accountants, Generally Accepted Accounting Standards, and the U.S. Comptroller General's standards for audits of government organizations.

The information received by the Board in these periodic audit reports eliminates the need for a certificate of compliance from each Bank's president. Consequently, the Board is amending § 524.6 to remove entirely the requirement for the submission of a certificate of compliance to the Board.

Pursuant to 12 CFR 508.11 and 508.14, the Board finds that this amendment makes no substantial change in the Board's policy regarding Bank compliance with Board regulations, policies, and directives. The Banks, through their audit reports, must continue to certify their compliance with appropriate laws, regulations, directives, and rules. This regulation relieves Banks from the requirement to submit a document that the Board no longer finds necessary.

The Board finds that this regulation relieves a previous restriction. Consequently, the Board finds that public notice is not required, and the 30-day delay of the effective date of this amendment is also unnecessary. Accordingly, this amendment will be effective upon publication in the Federal Register.

List of Subjects in 12 CFR Part 524

Federal home loan banks, Securities, Surety bonds.

Accordingly, the Board hereby amends Part 524, Subchapter B, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 524—OPERATIONS OF THE BANKS

1. The authority citation for Part 524 continues to read as follows:

Authority: Sec. 10, 47 Stat. 731, as amended (12 U.S.C. 1430); sec. 12, 47 Stat. 735, as amended (12 U.S.C. 1432); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); Reorg. Plan No. 3 of 1947, 12 FR 4961, 3 CFR, 1943-48 Comp., p. 1071.

§ 524.6 [Amended]

2. Amend section 524.6 by removing the phrase "and certification of compliance of this subchapter signed by the Bank President" from the first sentence.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Assistant Secretary.

[FR Doc. 88-18057 Filed 8-10-88; 8:45 am]

BILLING CODE 6720-01-M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Privacy Act

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: This rule redesignates the positions responsible for handling and determining administrative appeals under the Privacy Act to reflect TVA organizational changes. This rule also updates the list of published TVA system of records notices and the days on which TVA offices are closed and revises the form of certain legal citations contained in the exemption provisions. A paragraph dealing with an information source within TVA regarding amendment of records has been deleted since information regarding amendment of records is readily available in the TVA Administrative Release System. This rule was not published in proposed form since it relates to agency organization, procedure, and practice. Since this rule is nonsubstantive, it is being made effective immediately.

EFFECTIVE DATE: August 11, 1988.

FOR FURTHER INFORMATION CONTACT: Ronald E. Brewer, 615-751-2520.

List of Subjects in 18 CFR Part 1301

Administrative practice and procedure, Freedom of Information, Privacy Act, Sunshine Act.

For the reasons set forth in the preamble, Title 18, Chapter XIII of the Code of Federal Regulations is amended as follows:

PART 1301—PROCEDURES

1. The authority citation for Part 1301 continues to read as follows:

Authority: 48 Stat. 58, as amended; 16 U.S.C. 831-831dd, unless otherwise noted.

2. Section 1301.12 is amended by revising paragraphs (d) and (f) to read as follows:

§ 1301.12 Definitions

(d) The term "TVA system notice" means a notice of a TVA system published in the Federal Register pursuant to the Act. TVA has published TVA system notices about the following TVA systems:

Apprentice Training Record System—TVA.
Personnel Files—TVA.
Cooperative Training Program for Construction Craftsmen—TVA.
Demonstration Farm Records—TVA.
Discrimination Complaint Files—TVA.
Employee Accident Information System—TVA.
Employee Accounts Receivable—TVA.
Employee Alleged Misconduct Investigatory Files—TVA.
Medical Record System—TVA.
Employee Statement of Employment and Financial Interests—TVA.
Payroll Records—TVA.
Employee Travel Advance Records—TVA.
Employment Applicant Files—TVA.
Grievance Records—TVA.
Land Between The Lakes Hunter Records—TVA.
Land Between The Lakes Register of Law Violations—TVA.
Employee Supplementary Vacancy Announcement Records—TVA.
Consultant and Personal Service Contractor Records—TVA.
Nuclear Quality Assurance Personnel Records—TVA.
Questionnaire-Farms in Vicinity of Proposed Nuclear Power Plant—TVA.
Radiation Dosimetry Personnel Monitoring Records—TVA.
Reforestation, Erosion control, and Plantation Case History Records—TVA.
Retirement System Records—TVA.
Test Demonstration Farm Records—TVA.
Woodland Resource Analysis Program Input Data—TVA.
Electricity Use, Rate, and Service Study Records—TVA.
Land Between The Lakes Mailing Lists—TVA.
OIG Investigative Records—TVA.
Call Detail Records—TVA.

Office of Nuclear Power Call Detail
Records—TVA.
Project/Tract Files—TVA.

(f) The term "reviewing official" means TVA's Vice President, Human Resources, or another TVA official designated by the Vice President in writing to decide an appeal pursuant to § 1301.19;

3. Section 1301.14 is amended by revising the third sentence of paragraph (g) to read as follows:

§ 1301.14 Times, places, and requirements for identification of individuals making requests.

(g) * * * Offices are closed on Saturdays, Sundays, and the following holidays: New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

§ 1301.17 [Amended]

4. In § 1301.17, paragraph (d) is removed and paragraph (e) is redesignated as paragraph (d).

5. Section 1301.19 is amended by revising the second sentence of paragraph (a) introductory text to read as follows:

§ 1301.19 Appeals on initial adverse agency determination on correction or amendment.

(a) * * * An appeal must be taken within 20 days of receipt of notice of TVA's initial refusal to amend the record and is taken by delivering a written notice of appeal to the Vice President, Human Resources, Tennessee Valley Authority, Knoxville, Tennessee 37902. * * *

6. Section 1301.23 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 1301.23 General exemptions.

(b) The TVA system "Land Between The Lakes Register of Law Violations—TVA" is exempted from subsections (c)(3), (4); (d); (e)(1), (2), (3), (4)(G), (4)(H), (4)(I), (5); (f); (g); and (h) of 5 U.S.C. 552a and corresponding sections of these rules pursuant to section (j)(2) of 5 U.S.C. 552a (section 3 of the Privacy Act).

7. Section 1301.24 is amended by revising the first sentence of paragraph

(a), paragraph (b)(1), and paragraph (c)(1) to read as follows:

§ 1301.24 Specific exemptions.

(a) The TVA system "Employee Alleged Misconduct Investigatory Files—TVA" is exempted from subsections (c)(3); (d); (e)(1), (4)(G), (4)(H), (4)(I); and (f) of 5 U.S.C. 552a and corresponding sections of these rules pursuant to section (k)(2) of 5 U.S.C. 552a (section 3 of the Privacy Act).

(b)(1) The TVA systems "Apprentice Training Record System—TVA," "Consultant and Personal Service Contractor Records—TVA," "Cooperative Training Program for Construction Craftsmen—TVA," "Employment Applicant Files—TVA," "Personnel Files—TVA," and "Nuclear Quality Assurance Personnel Records—TVA" are exempted from subsections (d); (e)(4)(H); (f)(2), (3), and (4) of 5 U.S.C. 552a and corresponding sections of these rules to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. These TVA systems are exempted pursuant to section (k)(5) of 5 U.S.C. 552a (section 3 of the Privacy Act).

(c)(1) The TVA systems "Apprentice Training Record System—TVA," "Consultant and Personal Service Contractor Records—TVA," "Cooperative Training Program for Construction Craftsmen—TVA," "Employment Applicant Files—TVA," and "Personnel Files—TVA," are exempted from subsections (d); (e)(4)(H); (f)(2), (3), and (4) of 5 U.S.C. 552a and corresponding sections of these rules to the extent that disclosure of testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service would compromise the objectivity or fairness of the testing or examination process. These systems are exempted pursuant to section (k)(6) of 5 U.S.C. 552a (section 3 of the Privacy Act).

John W. Thompson,
Vice President, Services.

[FR Doc. 88-18169 Filed 8-10-88; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 838

Air Force Systems Command Contractor Performance Assessment

AGENCY: Department of the Air Force, DoD.

ACTION: Final Rule.

SUMMARY: This part sets policy, assigns responsibilities, and provides procedures for systematically assessing contractor performance on current contracts. The Contractor Performance Assessment Reporting System (CPARS) will assess contractor performance on current AFSC contracts for use in future contract award decisions. These assessments will be prepared by AFSC program directors and forwarded to the contractor for review and comment. This part is limited in scope to contracts for concept demonstration and validation, full-scale development, or full-rate production and deployment efforts. Laboratory (science and technology programs), service, and operations and maintenance efforts are not included.

EFFECTIVE DATE: September 1, 1988.

ADDRESS: HQ AFSC/PKCP, Andrews AFB, DC 20334/5000.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Wright, telephone (301) 981-4022.

SUPPLEMENTARY INFORMATION: On March 23, 1988, the Air Force published a proposed rule on contractor performance assessment (53 FR 9455). A number of comments were received that resulted in changes throughout the document. Summarized below are the general and specific comments received and actions taken.

a. Comment: It can be difficult to apply objective perspectives to complex issues. There is little incentive for program managers to comment objectively on possible actions by the government or its consultants that may have adversely affected contractor performance.

Response: The CPAR was structured with a check and balance system to gain an objective assessment. Both the government and contractor perspectives are captured. In addition, each assessment is reviewed by a management level above the program manager to ensure the assessment is based on objective data. The rule has been amended to discuss the checks and balances of the system (§838.1(c)) and revised to require the assessments be based on objective facts.

b. *Comment:* Revise the program phase terminology used to be consistent with the more commonly used terminology within DOD Directive 5000.1. Revise R&D terminology to correlate with new science and technology program.

Response: Throughout the rule the terminology has been revised as requested.

c. *Comment:* The CPAR assessment should be completed by either the program manager or director. In some situations, the program director is a general officer and could serve as the reviewing official.

Response: Throughout the rule "or program manager" has been added after "program director."

d. *Comment:* Clarify the difference between the initial CPAR assessment (§838.5) and the initial assessment sent to the contractor (§838.6). Revise the instructions to have the program director sign his or her assessment when it is final and ready to be sent to the reviewing official.

Response: The rule has been clarified to distinguish between the initial CPAR assessments to be completed between 180 and 360 days after contract award and the "preliminary" assessments that the program director or manager sends to the contractor. In addition, the timing of the program director or manager's signature on the form has been delayed until after it has been reviewed by the contractor.

e. *Comment:* The entire CPAR assesses "contract" performance. Why do you have a separate assessment block on the form for "contracts?" Recommend deleting such a category and have the subitems "cost performance" and "management responsiveness" become primary items.

Response: The "contracts" item has been deleted. Throughout §838.10 the numbering of items and placement of guidance has been rearranged.

f. In addition to the comments and changes addressed above, editing changes were made and appropriate regulatory references were added throughout the rule for clarification purposes.

g. *Comment:* Section 838.2(a). This rule should not apply to Air Force Contract Management Division (AFCMD) since their only buying activity is Kirtland Contracting Center (KCC). KCC primarily supports the laboratories on base and only has a few weapons systems acquisitions.

Response: AFCMD deleted.

h. *Comment:* Section 838.2(b). Eliminate the encouragement to "broaden the application of CPARs to additional contract efforts and

contractors for (field activity) own use." Recommend that at least until a successful command-wide CPAR implementation has been launched and a usage culture established, such local utilization be prohibited to preclude potential abuse or bifurcation of the main purpose.

Response: Guidance revised to discourage broadening the application of CPARs and requires a high approval level for such actions (i.e., AFSC/CV). These requests will be closely monitored by the OPR, HQ AFSC/PK.

i. *Comment:* Section 838.4(a). Revise office symbol for receipt of local supplements to HQ AFSC/SD. They are responsible for maintaining the rule and should be the recipient.

Response: Revised as requested.

j. *Comment:* Section 838.5(a). Delete guidance concerning contracts in existence when the system is initiated. This guidance is needed on a one time basis and should be included in the implementation transmittal letter.

Response: Deleted as requested.

k. *Comment:* Section 838.5(b) Recommend allowing contractors an opportunity to request their CPARs be updated if a significant change in performance has occurred.

Response: Amended to address such a contractor's request.

l. *Comment:* Section 838.5(b) and (c). Clarify the period of performance to be covered by the intermediate and final CPARs.

Response: Revised to clarify that both the intermediate and final CPARs are limited to contractor performance occurring after the preceding CPAR. The final is not a summary of the entire contract effort.

m. *Comment:* Section 838.6(c). Recommend that all CPAR ratings be discussed in face-to-face meetings.

Response: Section 838.6(c) has been revised to "strongly recommend" face-to-face meetings. Making this requirement mandatory was not deemed practical.

n. *Comment:* Section 838.6(c)(4) and (e). Clarify when the 30 day time limit begins. Recommend a 90 day contractor response time and a ten page limit.

Response: Clarified to state that comments are due 30 days from the date of the transmittal letter and that comments received after the 30 day period should not be incorporated into the final CPAR. The additional time and space requested for contractor response would result in a lengthy process (150 days to complete) which produces an unmanageably large report. The goal is a clear and concise report.

o. *Comment:* Section 838.9. The matter of confidentiality of the CPAR data

relating to contractor performance is very important. Examination of the FOIA releasability issue is strongly recommended.

Response: AFSC is equally concerned about the protection of the sensitive and confidential data gathered on the CPAR. The rule discusses at length the requirements for internal and external protection of the data. Each FOIA request must be reviewed on a case-by-case basis; however, the rule has been amended to establish a central focal point for the command (HQ AFSC/PK) to consider and review CPAR FOIA requests.

p. *Comment:* Section 838.9(b). The requirement for a letter, signed by the company CEO, to obtain one's own CPAR data is unduly restrictive for large multi-business companies. Provisions should be made for delegating such access authority to contractor's representatives who have commitment authority such as divisional general managers, vice presidents of contract management, etc.

Response: Revised to allow CEOs to designate other corporate approval officials.

q. *Comment:* Section 838.10(a) Item 1. Recommend adding the Defense Activity Address Directory Code to clearly identify the contractor.

Response: Added.

r. *Comment:* Section 838.10(h) Item 10. Recommend segregating the contract specific description from the overall program description block. Additional space should be provided for the contract effort description. Detailed descriptions of both the program and contract effort will assist the source selection teams in their task of determining if the work assessed by the CPAR is relevant to their source selection.

Response: Revised as requested. This resulted in a renumbering of items in § 838.10.

s. *Comment:* Sections 838.10(i)(1) and (i)(3)(i)(C). Will subcontract actions highlighted by the program manager or the prime contractor be reflected in the subcontractors CPAR file? Please clarify.

Response: No. The subcontractor actions are only highlighted in the narrative section of the form when they significantly affect the overall contract performance. While the program manager must consider the effects of good or bad performance by a subcontractor, the prime contractor still remains responsible for overall contract performance. Subcontractor performance, per se, will not be assessed; however, the prime's ability to

manage subcontracts (i.e., item 14h subcontract management) will be assessed.

t. *Comment:* Section 838.10(i)(3)(v)(B) Item 11E-2. The management responsiveness area inappropriately evaluates the contractor's "willingness to negotiate fair and reasonable prices and terms and conditions." This appears to be a punitive evaluation against any contractor who would take exception to the government's offered position and would lend itself to a subjective evaluation. Recommend deletion of such a description.

Response: Deleted.

The Department of the Air Force has determined that this is not a major rule as defined by Executive Order 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

A list of contractors in CPAR data base, a list of CPAR focal points, and a copy of AFSC Form 125 can be obtained from Ms. Susan Wright at the address shown above.

List of Subjects in 32 CFR Part 838

Government contracts.

Therefore, 32 CFR is amended by adding Part 838 to read as follows:

PART 838—AIR FORCE SYSTEMS COMMAND CONTRACTOR PERFORMANCE ASSESSMENT

Sec.

Subpart A—Air Force Systems Command Policy

- 838.1 Purpose of Contractor Performance Assessment Reporting System (CPARS).
838.2 Applicability and scope.

Subpart B—Responsibilities Assigned

- 838.3 HQ AFSC responsibilities.
838.4 Field activity responsibilities.

Subpart C—CPAR Procedures

- 838.5 Frequency of reporting.
838.6 CPAR processing.
838.7 CPAR focal point.
838.8 AFSC Source Selection Offerors Report (RCS: SYS-PKC(A)8801).
838.9 CPAR markings and protection.
838.10 Instructions for completing AFSC Form 125, Contractor Performance Assessment Report (CPAR).

Authority: 10 U.S.C. 2305(a)(3).

Note: Part 807 of this chapter states Air Force procedures for issuing publications and forms to private citizens, organizations and commercial activities.

Subpart A—Air Force Systems Command Policy

§ 838.1 Purpose of Contractor Performance Assessment Reporting System (CPARS).

(a) The sole purpose of CPARS is to provide program management input for a command-wide performance data base for use in AFSC source selections (AFR 70-15 and AFR 70-30 discuss source selection policy and procedures). Performance assessments will be used as an aid in awarding contracts to contractors that consistently produce quality products that conform to requirements within contract schedule and cost. The CPAR can be used to effectively communicate contractor strengths and weaknesses to source selection officials. The CPAR will not be used for any purpose other than the one in this paragraph.

(b) The CPAR assesses a contractor's positive and negative performance on a given contract during a specific period of time. Each assessment must be based on objective facts and be supportable by program and contract management data, such as cost performance reports, technical interchange meetings, financial solvency assessments, production management reviews, contractor operations reviews, functional performance evaluations and earned contract incentives. Subjective assessments concerning the causes or ramifications of the contractor's performance should be provided; however, speculation or conjecture should not be included.

(c) The CPAR assessment process is designed with a series of checks and balances to facilitate the objective and consistent evaluation of contractor performance. Both government and contractor program management perspectives are captured on the form. The assessment is reviewed by a level of management above the program director or manager to ensure consistency with other CPAR evaluations throughout the product division and other internal reviews and evaluations of the program, such as command assessment reviews (CAR) and program assessment reviews (PAR).

§ 838.2 Applicability and scope.

(a) This part applies to Air Force Systems Command (AFSC) Armament Division, Aeronautical Systems Division, Ballistic Missile Office, Electronic Systems Division, and Space Division. The CPAR is limited to contracts for concept demonstration and validation, full-scale development (FSD), or full-rate production and deployment efforts. Laboratory (science and

technology programs), service, and operations and maintenance efforts are not included. A CPAR must be completed on all such contracts over \$5 million (face value, excluding unexercised options) with any division or subsidiary of the contractors. When a single contract instrument requires segregation of costs for combining FSD and production efforts or containing multiple productions lots, an individual CPAR may be completed for each segment of work.

(b) Broadening the application of CPARs by a local activity to additional contract efforts and contractors requires AFSC/CV approval before implementation.

Subpart B—Responsibilities Assigned

§ 838.3 HQ AFSC responsibilities.

(a) Deputy Chief of Staff, Systems (HQ AFSC/SD) ensures that the overall management and control of the CPARS is consistent with this part. Formulating and updating this part is a joint responsibility of HQ AFSC/SD and Deputy Chief of Staff, Contracting (HQ AFSC/PK).

(b) HQ AFSC/PK is responsible for maintaining the list of contractors.

§ 838.4 Field activity responsibilities.

The commander or vice commander of each of the applicable field activities:

(a) Establishes procedures to implement this part. (Submit one copy of local supplements to HQ AFSC/SD).

(b) Establishes a CPAR focal point. This focal point is responsible for the collection, control, storage, and distribution of CPARs prepared at the field activity.

(c) Ensures timely completion of CPARs by program directors or managers.

(d) Ensures timely review of CPARs by local reviewing officials.

(e) Ensures submission of AFSC Source Selection Offerors Report (§ 838.8).

Subpart C—CPAR Procedures

§ 838.5 Frequency of reporting.

(a) For new contracts, an initial CPAR will be completed between 180 days and 365 days after contract award. Instructions for completing a CPAR are in § 838.10.

(b) An intermediate CPAR will be completed on an annual basis for the entire period of performance of the contract. More frequent reporting is required when the program director or manager is aware of a change in performance that significantly alters the assessment of the contractor or when a

change in program directors or managers occurs. Contractors may request that the CPAR be updated by the program office if a significant change in performance has occurred. Generally, no more than two CPARs a year should be prepared. An intermediate CPAR is limited to contractor performance occurring after the preceding CPAR. To improve efficiency in preparing the CPAR, it is recommended that the CPAR be completed together with other reviews (for example, PARs, CARs, award fee determinations, major program events, or program milestones).

(c) A final CPAR will be completed upon contract termination or within six months following the delivery of the final major end item on contract. The final CPAR is limited to the contractor performance occurring after the preceding CPAR.

§ 838.6 CPAR processing.

Each CPAR is completed, reviewed, coordinated, and approved within AFSC. Contractor organizations will be given an opportunity to review and comment on the program director's or manager's preliminary assessment. The CPAR review and approval process is as follows:

(a) The project manager or engineer responsible for the contract being reviewed prepares the preliminary documentation and assessment in coordination with the project team. This assessment should be based on multifunctional input. Support contractors, such as system engineering and technical assistance or federal contract research center contractors, may provide input as project team members but are not allowed access to completed CPARs unless specifically authorized in support of a source selection. The project manager or engineer must ensure that all CPAR documentation and forms are marked "For Official Use Only/Source Selection Sensitive" according to Part 806 of this chapter and chapter 4 of AFR 70-15.

(b) The program director or manager responsible for the overall program reviews and transmits the preliminary CPAR to the contractor. The program director or manager must not sign at item 17 until just before submitting the final assessment to the product division reviewing official. Program director or manager narrative remarks are limited to item 16 plus one additional single-spaced typewritten page.

(c) The program director or manager will retain a copy of the preliminary CPAR and transmit the original to his or her counterpart within the contractor's organization. Face-to-face meetings with contractor management to discuss

preliminary CPAR ratings are strongly recommended. The transmittal letter must provide the following guidance to the contractor.

(1) Protect the preliminary CPAR as a source selection sensitive document.

(2) Strictly control access to the preliminary CPAR within the contractor organization.

(3) Do not release the preliminary CPAR to persons or entities outside contractor control. Do not use the preliminary CPAR data for advertising, promotional material, preaward surveys, proposal submittals, production readiness reviews, or other similar purposes.

(4) Responses are optional; if provided, they are due within 30 days of the date of the transmittal letter and are limited to item 18 plus one additional single-spaced typewritten page. This page limit will be strictly enforced. Additional pages will not be reviewed or included in the CPAR data base. Contractor comments received after the 30 day response period may not be included in the final CPAR.

(5) Focus comments on the objective portion of the program director's or manager's narrative and provide views on causes and ramifications of the assessed performance.

(d) After receiving and reviewing the contractor comments, the program director or manager may revise the preliminary assessment. Revised assessments must be recorded on a new CPAR form that will be attached to the original. Complete items 1 through 5 and mark item 12 "Revision to CPAR for period (insert period covered by report)." Indicate revised ratings in items 14 or 15 and explain the reasons for the changes made in item 16.

(e) After receiving contractor comments or 30 days from the date of the transmittal letter to the contractor, whichever occurs first, the program director or manager will sign item 17 and send the CPAR to the product division reviewing official for review and signature according to local procedures. The product division reviewing official must be at least one level above the program director or manager.

(f) After the CPAR is completed, the program director or manager will send the CPAR and all attachments to the CPAR focal point for input into the command-wide data base. No copies of the final CPAR will remain on file at the program office. Working papers associated with CPAR evaluations may be retained but must be protected "For Official Use Only/Source Selection Sensitive."

(g) All records created under this part will be retained and disposed of according to AFR 12-50.

§ 838.7 CPAR focal point.

Each local activity CPAR focal point will keep original CPARs and all attachments in separate files for each corporation. Each corporate file will contain separate files for divisions and subsidiaries. Each CPAR will be retained for 5 years, unless the program director or manager requests a longer retention period. For example, a long development program may necessitate longer retention to reflect contractor performance on the entire program. Distribution of CPARs within AFSC will only be made from one field activity CPAR focal point to another. Source selection team members must contact their local CPAR focal point for all appropriate CPARs.

§ 838.8 AFSC Source Selection Offerors Report (RCS: SYS-PKC(A)8801).

To keep the CPAR data base current and reflect the contractors that AFSC evaluates during source selection, an annual listing of offerors is required. The listing must:

(a) Reflect offerors on concept demonstration and validation, full-scale development or full-rate production and deployment source selections over \$5 million (face award value, including options) that were completed during the previous fiscal year.

(b) State the name and address of the contractor division or subsidiary. Identify the parent corporation, if applicable. State number of times contractor submitted proposals.

(c) Identify additional contractors recommended for inclusion in the data base, along with a brief justification.

(d) Be submitted to HQ AFSC/PKC annually by October 31.

§ 838.9 CPAR markings and protection.

All CPAR forms and attachments will be marked "For Official Use Only/Source Selection Sensitive." CPARs have the unique characteristic of always being predecisional in nature. They will always be source selection sensitive because they will be in constant use to support ongoing source selections. This predecisional nature of the CPAR is a basis for selections. This predecisional nature of the CPAR is a basis for requiring that the CPAR data base be protected from unauthorized disclosure to personnel or entities outside the source selection process. It must be noted, however, that CPARs may also contain information that is proprietary to the contractor that is the subject of

the report. Information contained on the CPAR such as trade secrets and confidential commercial or financial data, obtained from the contractor in confidence, must be protected from unauthorized disclosure. Additionally, CPARs may contain valuable government generated commercial information that will be used in the award of government contracts. Such commercially valuable government-generated information must be protected from unauthorized disclosure. Based on the confidential nature of the CPAR, the following guidance applies to protection both internal and external to the government.

(a) *Internal government protection.* CPARs must be treated as source selection sensitive at all times. The flow of CPARs throughout AFSC in support of source selections will be controlled by the CPAR focal points and transmitted only from one CPAR focal point to another (see AFSC Supplement 1 to AFR 70-15 and AFSC Supplement 1 to AFR 70-30). Outside of use in an instant source selection, information contained on the CPARs must be protected in the same manner as information contained in completed source selection files (see AFRs 70-15 and 70-30). Information contained on the CPAR may not be used to support preaward surveys, debarment proceedings or any other internal government reviews.

(b) *External government protection.* Due to the sensitive and confidential nature of the CPARs, disclosure of CPAR data to contractors or others outside the government is not authorized. An exception to this rule is for the contractor who is the subject of the CPAR. In this situation, access to review the completed CPAR will be granted by the CPAR focal point if the contractor personnel requesting access have a letter signed by their corporate chief executive officer (CEO) or authorized designee (for example, general manager or division vice-president) granting disclosure to that individual. When the CEO has designated other corporate approval officials, both the CEO designation letter and CPAR access letter signed by the CEO designee must be presented to the CPAR focal point. Copies of the final CPAR are not allowed to be made or retained by the contractor's representative. Such limited and controlled access by the contractor's representative will not inhibit candid agency decision making. This access is needed to ensure the accuracy of changes made to the CPAR after the contractor's initial review.

Note: During the source selection discussion process, the contractor will be notified of relevant past performance data, derived from a CPAR or other sources, that requires clarification or could lead to a negative rating. See AFSC Supplement 1 to AFR 70-15 and AFSC Supplement 1 to AFR 70-30.

On those rare occasions when a Freedom of Information Act (FOIA) request is received for CPAR release, process the request through FOIA channels to HQ AFSC/DAQDI for review and consideration by HQ AFSC/PK.

§ 838.10 Instructions for completing AFSC Form 125, Contractor Performance Assessment Report (CPAR).

Type all information on the form. No handwritten CPARs will be accepted by the CPAR focal points for inclusion into the AFSC data base.

(a) *Item 1:* State the name and address of the division or subsidiary of the contractor performing the contract. Identify the parent corporation (no address required). Identify the contractor Department of Defense Activity Address Directory code. (DODAAD).

(b) *Items 2-6:* Initial, intermediate or final report. Period covered by report. Contract Number. Product Division. Location of contract performance (if not in item 1).

(c) *Item 7:* State current contract period of performance including any authorized extensions, such as options, that have been exercised.

(d) *Item 8:* State the current percent complete of the contract. If cost performance reports (CPR) or cost/schedule status reports (C/SSR) data is available, calculate percent complete by dividing cumulative budgeted cost of work performed (BCWP) by contract budget base (CBB) (less management reserve) and multiplying by 100. CBB is the sum of negotiated cost plus estimated cost of authorized undefinitized work. If CPR or CSSR data is not available, estimate percent complete by dividing the number of months elapsed by total number of months in contract period of performance and multiplying by 100.

(e) *Item 9:* State the current face value of contract. For incentive contracts, state target value.

(f) *Item 10:* Identify the basis of award: Competitive, Follow-on to Competition, or Noncompetitive.

(g) *Item 11:* Identify the contract type. For mixed contract types, check the predominate contract type and identify the other contract type in the "mixed" category.

(h) *Item 12:* Provide a short descriptive narrative of the program. Spell out all abbreviations. Identify overall program phase and production lot (for example, concept development, full-scale development, low-rate initial production, or full-rate production (lot 2). For major weapon systems, identify DODD 5000.1 milestone phases.

(i) *Item 13:* Provide a short description of the contract effort that identifies key technologies, components, subsystems, and requirements. Describe the effort in enough detail to assist the source selection team members who will screen the CPAR to determine efforts that are relevant to their source selection. It is important to address the complexity of the contract effort and the overall technical risk associated with accomplishing the effort.

(j) *Item 14:* Evaluation areas.

(1) *Introduction.* In preparing the CPAR, the program director or manager should strive for consistency between the ratings used for the areas of evaluation on this form and the similar areas used for the PAR, CAR, program director assessment report (PDAR), or program manager assessment report (PMAR). The major difference is the CPAR assesses a contractor's performance on an individual contract while the PAR, CAR, PDAR and PMAR assess the overall program. A blue rating has been added to denote exceptional performance which is not found in the other assessments. This new rating is added because recognition of exceptional ability is important in the source selection process. Each area assessment must be based on objective data that will be provided in item 16. Facts to support specific areas of evaluation should be obtained from the government specialists familiar with the contractor's performance on the contract under review. Such specialists may, for example, be from engineering, contracting, contract administration, manufacturing, quality, and logistics. The amount of risk inherent in the effort should be recognized as a significant factor and taken into account when assessing the contractor's performance. For example, if a contractor met an extremely tight schedule, a blue (exceptional) assessment may be given in recognition of the inherent schedule risk. The CPAR is designed to assess prime contractor performance. However, in those evaluation areas where subcontractor actions have significantly influenced the prime contractor's performance in a negative or positive way, record the subcontractor actions in item 16. Many of the evaluation areas in item 14 represent groupings of diverse

elements. The program director or manager should consider each element and use the area rating to highlight significant issues. For example, product assurance (item 14d) could be rated marginal if quality is a problem even though other elements within the product assurance definition were satisfactory.

(2) *Evaluation colors*—(i) *Blue—Exceptional*. Indicates performance clearly exceeds contractual requirements. The area of evaluation contains few minor problems for which corrective actions appear highly effective. In the cost performance area, blue indicates a positive cost variance.

(ii) *Green—Satisfactory*. Indicates performance clearly meets contractual requirements. The area of evaluation contains some minor problems for which the corrective actions appear satisfactory. In the cost performance area, green indicates no cost variance or a negative cost variance greater than zero but less than or equal to 5 percent.

(iii) *Yellow—Marginal*. Indicates performance meets contractual requirements. The area of evaluation contains a serious problem for which corrective actions have not yet been identified, appear only marginally effective, or have not been fully implemented. In the cost performance area, yellow indicates a negative cost variance greater than 5 percent but less than or equal to 15 percent.

(iv) *Red—Unsatisfactory*. Indicates the contractor is in danger of not being able to satisfy contractual requirements and recovery is not likely in a timely manner. The area of evaluation contains serious problems for which the corrective actions appear ineffective. In the cost performance area, red indicates a negative cost variance greater than 15 percent.

(3) *Arrows*. Upward or downward arrows may be used to indicate an improving or worsening trend insufficient to change the assessment status.

(4) *NA*. Areas not applicable to a particular contract.

(k) *Item 14A: Product/system performance*. This item must be scored separately. Evaluate the extent to which the contractor is meeting overall product or system performance in terms of the contract requirements, including but not limited to the statement of work, specifications, contract data requirement lists, and significant special contract clauses.

(1) *Item 14A-1: Engineering design/support*. Evaluate the contractor's engineering design capability and engineering resource support. Consider the amount and quality of engineering

resources devoted to supporting the contract effort.

(2) *Item 14A-2: Software development*. Evaluate the extent to which the contractor is meeting the software development, modification, or maintenance contract requirements or a government-approved software development plan. Consider the amount and quality of software development resources devoted to support the contract effort.

(l) *Item 14B: Schedule*. Evaluate the contractor's adherence to the contract schedule. Identify in item 16 the major milestones, deliverable items, or significant data items which contribute to the schedule evaluation. The short narrative explanation in item 16 should address significance of items, discuss causes, and evaluate effectiveness of contractor corrective actions. If CPR or C/SSR data are available and the schedule variance exceeds 15 percent (positive or negative), briefly discuss in item 16 the significance of this variance for the contract effort. Cumulative schedule variance in dollars is defined as budgeted cost of work performed (BCWP) minus budgeted cost of work scheduled (BCWS)—Percent schedule variance is defined as $((BCWP - BCWS) / BCWS) \times 100$.

(m) *Item 14C: Cost performance*. If CPR or C/SSR data are available, evaluate current cost variance if the contract is greater than 10 percent complete. Put the current percent variance and government estimate at completion in item 15 and give a short narrative explanation of causes and contractor-proposed solutions in item 16. Calculations. See item 8 to calculate percent complete. Compute current cost variance percentage by dividing cumulative cost variance to date (column 11 of the CPR, Column 6 of the C/SSR) by cumulative BCWP and multiplying by 100. Compute completion cost variance percentage by dividing CBB less government's estimate at completion by CBB and multiplying by 100. The CBB must be the current budget base against which the contractor is performing (including formally established overtarget baselines (OTB)). If an OTB has been established since the last CPAR, a brief description in item 16 of the nature and magnitude of the baseline adjustment must be provided. Subsequent CPARs must evaluate cost performance in terms of the revised baseline and reference the CPAR which described the baseline adjustment. For example: "The contract baseline was formally adjusted on (date). See CPAR for (period covered by CPAR) for an explanation." If CPR data or C/SSR data are not available,

evaluate contractor cost management. Is the contractor experiencing cost growth? Underrun? Provide a short narrative explanation in item 16 of causes and the contractor's proposed solutions.

(n) *Item 14D: Product assurance*. Product Assurance is the collection of disciplines needed to design, test, and manufacture systems or equipment meeting specified requirements and suitable for intended use. The product assurance assessment evaluates adequacy of contractor organization, resources planning, design, manufacturing and test actions to meet system or equipment reliability, maintainability cost, and quality requirements with minimum risk.

(o) *Item 14E: Test and evaluation*. Evaluate the adequacy of the contractor's performance in planning, supporting, conducting, and assessing the inhouse and independent test and evaluation programs.

(p) *Item 14F: ILS program*. Evaluate the adequacy of the contractor's performance in accomplishing integrated logistics support (ILS) program tasks and in performing logistics support analysis (LSA) activities. The nine ILS element groupings are maintenance planning; manpower and personnel; supply support; support equipment; technical data; training and support; computer resources support; facilities, packaging, handling, storage, and transportation; and design interface.

(q) *Item 14G: Management responsiveness*. Evaluate the adequacy of the contractor's responsiveness. Address issues such as the timeliness and quality of problem identification, corrective action plans, and proposal submittals.

(r) *Item 14H: Subcontract management*. Evaluate the contractor's effort devoted to managing subcontracts. Consider efforts taken to ensure early identification of subcontract problems and the timely application of corporate resources to preclude subcontract problems from impacting overall prime contract performance.

(s) *Item 14I: Other*. Specify any additional evaluation areas that are unique to the contract. If the contract contains an award fee, enter "award fee" in this item and list all the award fee percentages earned during the evaluation period under "N/A."

(t) *Item 15: Variances*. If CPR or C/SSR data are available, identify the cumulative cost variance to date (percent); the government's cost estimate at completion (percent); and the cumulative schedule variance

(percent). See item 14B and 14C for calculations.

(u) *Item 16: Program manager/director's narrative.* A short, factual narrative statement is required for all assessments regardless of color rating. Cross-reference the comments in item 16 to rated evaluation areas in item 14. Each narrative statement in support of the area assessment must contain objective data. An exceptional cost performance assessment could, for example, cite the former underrun dollar value and estimate at completion. A marginal engineering design/support assessment could, for example, be supported by information concerning personnel changes. Key engineers familiar with the effort may have been replaced by less experienced engineers. Sources of data include Air Force Operational Test and Evaluation Center operational test and evaluation results; technical interchange meetings; production readiness reviews; earned contract incentives; or award fee evaluations.

(v) *Item 17: Program manager/director signature block.* This is signed after contractor review and just prior to sending it to product division review official.

(w) *Item 18: Contractor comments (contractor's option).* See § 838.6(c) for guidance on sending the CPAR to the contractor for review and comment.

(x) *Item 19: Contractor representative signature block.*

(y) *Item 20: Review by product division reviewing official.* The reviewing official must be at least one level above the program director or manager. This individual will be designated by local procedures.

(z) *Item 21: Product division reviewing official signature block.*

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-18130 Filed 8-10-88; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 1

[CGD 88-051]

Delegation of Authority Under the Comprehensive Environmental Response, Compensation and Liability Act CERCLA as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: These rules delegate authority to Coast Guard Officials to perform pollution response functions under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA). These laws provide authority to respond to releases of hazardous substances, pollutants, and contaminants into the environment. The delegations will allow field commands to respond rapidly to releases from vessels and facilities in the coastal zone.

EFFECTIVE DATE: August 11, 1988.

FOR FURTHER INFORMATION CONTACT: Lieutenant Dan R. Williamson (202-267-0434).

SUPPLEMENTARY INFORMATION: Since these rules relate to agency management, procedure, and practice, a notice and comment are unnecessary and they may be made effective upon publication in the *Federal Register*.

CERCLA (Pub. L. 96-510; 94 Stat. 2767; 42 U.S.C. 9601) provides authority to respond to releases of hazardous substances, pollutants, and contaminants into the environment. In 1981 the President delegated to the Secretary of Transportation the authority under CERCLA to respond to releases in the coastal zone (E.O. 12316) including all U.S. waters subject to the tide, U.S. waters of the Great Lakes, and specified ports and harbors on inland rivers. The Secretary of Transportation redelegated to the Commandant authority under CERCLA to respond to releases and threats of releases from vessels and to take immediate removal action at facilities other than hazardous waste management facilities. The Commandant, in turn, delegated certain of these response functions to each District Commander and predesignated on-scene commander.

CERCLA was amended by SARA on October 17, 1986, Executive Order 12580 revoked Executive Order 12316 and delegated the President's functions under CERCLA, as amended, to the heads of various Executive Branch departments and agencies, including the Secretary of Transportation. The Secretary of Transportation has redelegated certain functions to the Commandant, U.S. Coast Guard (see 49 CFR 1.46(ff) and (gg), 52 FR 47007). This notice further delegates certain response functions in 49 CFR 1.46(ff) and (gg) to designated Coast Guard officials.

The delegation of response functions in this notice modifies the previous delegation in two principal respects. The first modification relates to the

establishment of the Maintenance and Logistic Commands (MLC's) within the Coast Guard. Contracting related functions which were previously delegated to the District Commanders are now delegated to MLC's. The second modification relates to the enactment of the SARA amendments to CERCLA. Those amendments create a number of new functions which are ancillary to the CERCLA response functions. The new functions are delegated to the District Commanders and On-Scene Coordinators as adjuncts to the basic response functions which are delegated to them.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 1

Administrative practice and procedure, Authority delegations [Government agencies], Freedom of Information, Penalties.

In consideration of the foregoing, Title 33 Code of Federal Regulations, is amended as follows:

PART 1—GENERAL PROVISIONS

1. The authority citation for Part 1 is revised to read as follows:

Authority: 5 U.S.C. 552; 14 U.S.C. 633; 49 CFR 1.45(b), 1.46; § 1.01-70 also issued under the authority of E.O. 12580, 52 FR 2923.

2. Section 1.01-70 is revised to read as follows:

§ 1.01-70 CERCLA delegations.

(a) For the purpose of this section, the definitions in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Pub. L. 96-510), as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499), apply. The Act, as amended, is referred to in this section as CERCLA.

(b) The Chief, Office of Marine Safety, Security and Environmental Protection (G-M) is delegated authority to take remedial action involving vessels under section 104 of CERCLA.

(c) Each Maintenance and Logistics Commander is delegated contract authority, consistent with each memorandum of understanding between the Coast Guard and the Environmental Protection Agency regarding CERCLA funding mechanisms, for the purpose of carrying out response actions pursuant to CERCLA sections 104(a), 104(b), 104(f), 104(g), 105(f), and 122.

(d) Each district commander is delegated authority as follows:

(1) Authority, pursuant to CERCLA section 106(a), to determine an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, and to secure such relief as may be necessary to abate such danger or threat through the United States attorney of the district in which the threat occurs.

(2) Authority, pursuant to CERCLA section 109, relating to violations of sections 103 (a) and (b) pertaining to notification requirements, and section 122 pertaining to administrative orders and consent decrees.

(e) Subject to the provisions of Executive Order 12580, 49 CFR 1.46 (ff) and (gg), and paragraph (g) of this section, each Coast Guard official, predesignated as an On-Scene Coordinator, is delegated authority as follows:

(1) Authority, pursuant to CERCLA sections 104(a), 104(b), 104(c) and consistent with the National Contingency Plan, to remove or arrange for the removal of releases and threatened releases of hazardous substances, and of pollutants or contaminants which may present an imminent and substantial danger to the public health or welfare.

(2) Authority, pursuant to CERCLA section 104(i)(11), to take such steps as may be necessary to reduce exposure that presents a significant risk to human health, and to eliminate or substantially mitigate that significant risk to human health.

(3) Authority, pursuant to CERCLA section 106(a), to issue orders to protect the public health and welfare and the environment whenever that official determines that a release or threatened release of a hazardous substance from a facility may present an imminent and substantial endangerment to the public health or welfare or the environment.

(4) Authority, pursuant to CERCLA section 104(e), except section 104(e)(7)(C), to enter establishments or other places where hazardous substances are or have been generated, stored, treated, disposed of, or transported from to inspect and obtain records, reports, samples and information in support of the response functions delegated in paragraphs (d), (e)(1), (e)(2), and (e)(3) of this section.

(5) Authority, pursuant to CERCLA section 122, to enter into an agreement with any person (including the owner or operator of the vessel or facility from which a release or substantial threat of release emanates, or any other potential

responsible person), to perform any response action, provided that such action will be done properly by such person.

(f) Except for the authority granted in paragraphs (d)(1) and (e)(1) of this section, each Coast Guard official to whom authority is granted in this section may redelegate and authorize successive redelegations of that authority. The authority granted in paragraph (e)(3) of this section may only be redelegated to commissioned officers.

(g) The response authority described in paragraph (e)(1) of this section does not include authority to—

(1) Summarily remove or destroy a vessel; or

(2) Take any other action that constitutes intervention under CERCLA, the Intervention on the High Seas Act (33 U.S.C. 1471 *et. seq.*), or other applicable laws. "Intervention" means any detrimental action taken against the interest of a vessel or its cargo without the consent of the vessel's owner or operator.

Dated: August 2, 1988.

P.A. Yost,
Admiral, U.S. Coast Guard, Commandant.
[FR Doc. 88-18223 Filed 8-10-88; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 117

[CGD7-88-08]

Drawbridge Operation Regulations; Great Canal, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Tortoise Island Homeowners Association, the Coast Guard is changing the regulations governing the Tortoise Island drawbridge by requiring that advance notice of opening be given during certain periods. This change is being made because of a lack of requests to open the bridge at night. This action will relieve the bridgeowner of the burden of having a person constantly available to open the draw and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on September 12, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, at (305) 536-4103.

SUPPLEMENTARY INFORMATION: On May 6, 1988, the Coast Guard published proposed rule (53 FR 16292) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated May 20, 1988. In each

notice, interested persons were given until June 20, 1988 to submit comments.

Drafting Information

The drafters of these regulations are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Comments

Seven comments were received. Four supported the proposal with one suggestion that a radio be installed on the bridge for easier communication. The bridge operator and the Tortoise Island Gatehouse are both equipped with radio telephones monitoring channels 13 and 16. Other supporters suggested that this bridge should have the same operating hours as the downstream Mathers Bridge across the Banana River at Indian Harbor Beach. The operating hours will be the same, with full time bridge tender service available on Friday and Saturday evenings and evenings preceding federal holidays. Three objections were received citing the possible adverse impact on waterway users. The Coast Guard has carefully considered these comments. Since the bridge opened only 12 times at night during a recent 9 month study, these objections are not considered valid. The final rule is, therefore, unchanged from the proposed rule published on May 6, 1988, except for minor editorial revisions needed to clarify the exact hours during which advance notice is required.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the waterway is infrequently used at night. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

**PART 117—DRAWBRIDGE
OPERATION REGULATIONS**

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. Section 117.285 is added to read as follows:

§ 117.285 Great Canal.

The draw of the Tortoise Island bridge, mile 2.6, shall open on signal; except that during the evening hours from 10 p.m. to 6 a.m. from Sunday evening until Friday morning, except on evenings preceding a federal holiday, the draw shall open on signal if at least 15 minutes notice is given.

Dated: July 29, 1988.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Commander,
Seventh Coast Guard District.

[FR Doc. 88-18222 Filed 8-10-88; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Hampton Roads, Regulation 88-41]

Safety Zone Regulation; Chesapeake Bay, off Fort Story, Virginia Beach, VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard Marine Safety Office, Hampton Roads, VA is establishing a safety zone around a U.S. Navy offshore-onshore exercise in the area of the Chesapeake Bay off Fort Story in Virginia Beach, VA. The exercise is scheduled to begin August 14, 1988 and end August 30, 1988. The safety zone is needed to minimize the risk of collision between Naval exercise transfer hoses/vessels/equipment and other vessels. The area of this exercise is not in a main channel and not travelled by deep draft marine traffic. Consequently, the economic impact of this proposal should be minimal.

EFFECTIVE DATE: This regulation is effective from 7:00 a.m., e.d.s.t., August 14, 1988 to 7:00 p.m., e.d.s.t., August 30, 1988, unless sooner terminated by the Captain of the Port, Hampton Roads, VA.

FOR FURTHER INFORMATION CONTACT: Lieutenant M. W. Carr, Port Operations Department, Coast Guard Marine Safety Office, Hampton Roads, 200 Granby Street, Norfolk, VA 23510-1888 at (804) 441-3284.

SUPPLEMENTARY INFORMATION: On August 1, 1988 the Coast Guard published a notice of proposed rulemaking in the Federal Register for

these regulations (53 FR 28890). Interested persons were requested to submit comments. No comments were received, therefore these regulations are being published without change.

Drafting Information

The drafters of these regulations are Lieutenant M. W. Carr, project officer, and Captain Robert J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Comments

No comments were submitted. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The economic impact should be minimal because the exercise area will not be in a main channel or in an area ordinarily travelled by deep draft traffic. In addition, the safety zone will be in a Naval restricted area regulated under 33 CFR 207.158 and vessels are prohibited from anchoring, trawling, crabbing, fishing, and dragging in this area. It is expected that recreational boaters and commercial fisherman in transit to or from the Atlantic Ocean will be the only persons affected by this safety zone and they will have to make only a small detour around the exercise area during the period the safety zone is in effect.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulations

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5.

2. Section 165.T0540 is added to read as follows:

§ 165.T0540 Safety Zone: Chesapeake Bay, off Fort Story, Virginia Beach, VA

(a) *Location:* The following areas are a safety zone: The waters within 250

yards of any offshore-onshore transfer hoses used or to be used during a seawater transfer exercise between the USNS OSPREY and the adjacent shoreline at Fort Story, Virginia Beach, VA; the USNS OSPREY; and any other vessels, buoys, moorings, and equipment associated with the deployment, retrieval, or marking of the offshore-onshore transfer hoses. (The USNS OSPREY is anchored at a position at approximately latitude 36°56.7' North, longitude 076°01.8' West.)

(b) *Regulations:* Except for participants in the joint Navy/Army multi-ship amphibious exercise, no person or vessel may enter or remain in the safety zone without the permission of the Captain of the Port or one of his designated representatives.

(c) *Effective dates:* This regulation is effective during periods when the offshore-onshore transfer hoses are being deployed and retrieved by the USNS OSPREY, between 7:00 a.m., e.d.s.t., on August 14, 1988, until 7:00 p.m., e.d.s.t., on August 30, 1988. The actual times that the safety zone will be in effect will be announced by marine broadcast Notice to Mariners.

Dated: August 8, 1988.

E.K. Johnson,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 88-18224 Filed 8-10-88; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION**38 CFR Part 4****Evaluations of Diplopia (Double Vision)**

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: The Veterans Administration (VA) has amended its Schedule for Rating Disabilities to provide a new method for evaluating the degree of disability caused by diplopia (double vision). The amendment is necessary for compatibility between evaluation methods and new testing techniques. The effect of the amendment will be to provide VA adjudication personnel with an appropriate method for evaluating the results of the new testing techniques.

EFFECTIVE DATE: This change is effective September 12, 1988.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, Veterans Administration, 810

Vermont Avenue, NW., Washington, DC 20420 (202) 233-3005.

SUPPLEMENTARY INFORMATION: On pages 32318-21 of the *Federal Register* of August 27, 1987, the VA published proposed regulatory amendments on the evaluation of diplopia. Interested persons were invited to submit comments, suggestions or objections by September 28, 1987. It was also necessary to publish a correction to the original proposal which appeared on page 35610 of the *Federal Register* of September 22, 1987.

Comments were received from the American Optometric Association, Indiana University School of Optometry and the Veterans of Foreign Wars of the United States. The comments were generally favorable although a few suggestions were made.

One commenter suggested that the VA closely follow the impact of these changes on disability ratings to ensure that veterans were neither overrated nor underrated based solely on these changes. Although the VA does not plan to reevaluate all veterans rated for diplopia, we do intend to periodically check for trends in evaluation levels which may indicate the need for further adjustment of the schedule.

Another commenter did not agree with our rating of diplopia in various gazes in accordance with equivalent visual acuities and, in any event, suggested equivalent decimal units instead of fractions. When rating disability due to diplopia, contraction of visual field or visual acuity, the VA uses figures for visual acuity as a common reference point for establishing the level of visual impairment. This system of equivalent visual acuity is well-understood by our rating specialists and we do not believe that changing to an alternate method is necessary or appropriate.

The third commenter objected to the proposed evaluation method as conforming to that recommended by the American Medical Association which was more restrictive (conservative) than the former rating schedule. The commenter proposed an alternative evaluation method which essentially increased all of the VA's proposed

evaluations without offering any evidence to support the changes. We cannot agree with the suggested alternative evaluations in the absence of such supporting evidence although we would be happy to review any such material to see if additional refinement should be proposed in the future.

The same commenter suggested that a minimum rating of 30 percent be assigned when an eye patch is medically indicated to correct diplopia since it was equivalent to loss of use of an eye. The commenter also applauded the assignment of an equivalent visual acuity of 5/200 for diplopia in the downward gaze from 21 to 30 degrees but noted that the Goldmann Perimeter Chart was wrong.

As a matter of fact, it was the Goldmann Perimeter Chart that was correct and the table of equivalent visual acuities that was wrong. This was corrected on September 22, 1987, as noted above, when the equivalent visual acuity was corrected to read 15/200.

The wearing of an eye patch is an artificial and temporary means for improving a visual problem. As such it cannot be the basis for assigning a permanent increase in evaluation. It is a rule of long-standing in the VA rating schedule (38 CFR 4.77) that diplopia which is only occasional or correctable is not considered a disability.

These amendments are adopted as proposed. We appreciate the interest expressed by each commenter.

The Administrator hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only claimants for VA benefits would be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulations, the VA has determined that this amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of \$100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Catalog of Federal Domestic Assistance Program numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: July 21, 1988.

Thomas K. Turnage,
Administrator.

38 CFR Part 4, *Schedule for Rating Disabilities*, is amended as follows

PART 4—[AMENDED]

1. The authority citation of Part 4 continues to read:

Authority: 72 Stat. 1125; 38 U.S.C. 355.

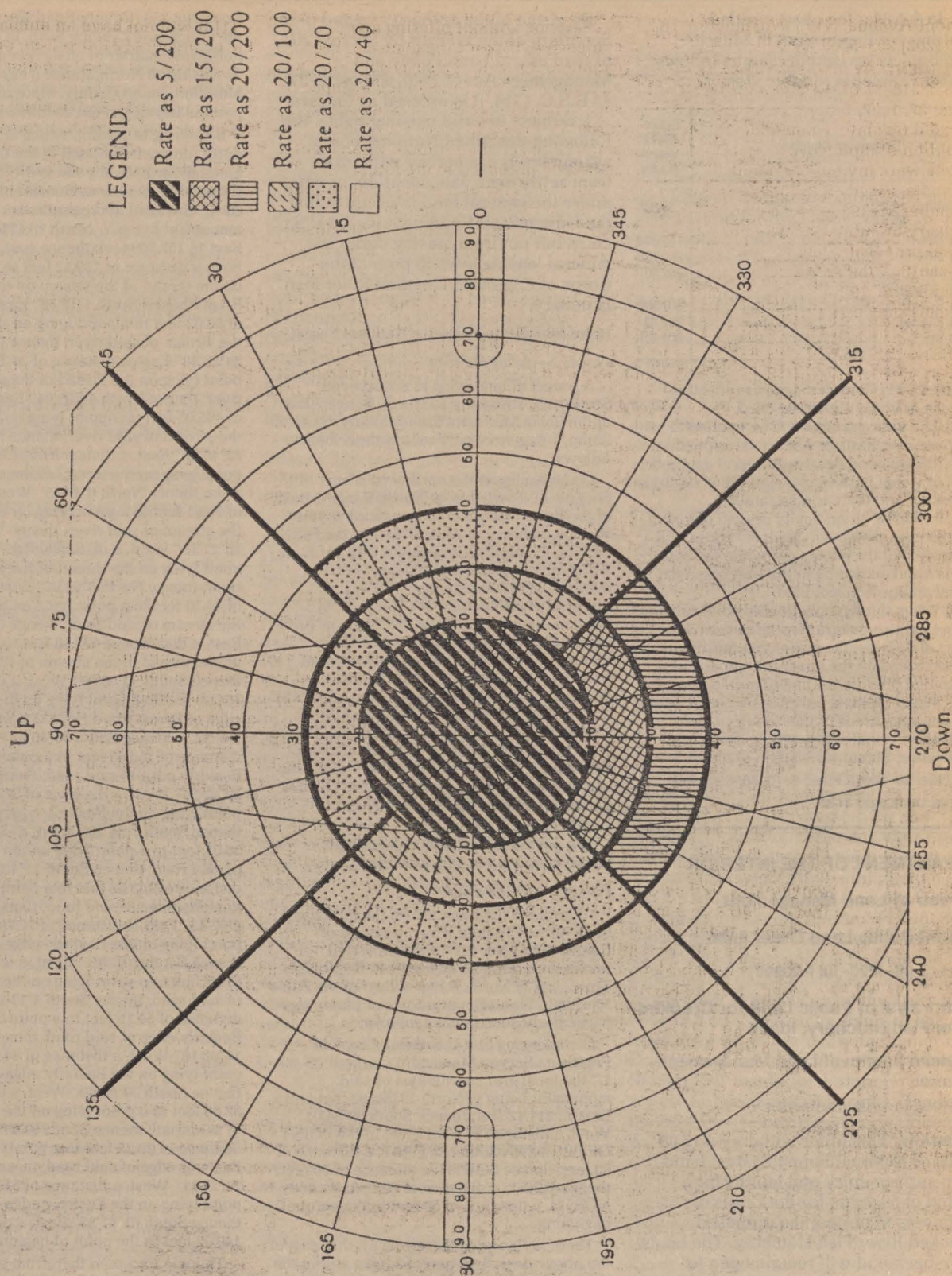
2. Section 4.77 is revised to read as follows:

§ 4.77 Examination of muscle function.

The measurement of muscle function will be undertaken only when the history and findings reflect disease or injury of the extrinsic muscles of the eye, or of the motor nerves supplying these muscles. The measurement will be performed using a Goldmann Perimeter Chart as in Figure 2 below. The chart identifies four major quadrants, (upward, downward, and two lateral) plus a central field (20° or less). The examiner will chart the areas in which diplopia exists, and such plotted chart will be made a part of the examination report. Muscle function is considered normal (20/40) when diplopia does not exist within 40° in the lateral or downward quadrants, or within 30° in the upward quadrant. Impairment of muscle function is to be supported in each instance by record of actual appropriate pathology. Diplopia which is only occasional or correctable is not considered a disability.

BILLING CODE 8320-01-M

Figure 2
(Goldmann Perimeter Chart)



3. In § 4.84a, the chart entitled "Ratings for Impairment of Muscular Function" is revised to read as follows:
6090 Diplopia (double vision).

Degree of Diplopia	Equivalent visual acuity
(a) Central 20°	5/200
(b) 21° to 30°	
(1) Down	15/200
(2) Lateral	20/100
(3) Up	20/70
(c) 31° to 40°	
(1) Down	20/200
(2) Lateral	20/70
(3) Up	20/40

Notes.—(1) Correct diagnosis reflecting disease or injury should be cited.

(2) The above ratings will be applied to only one eye. Ratings will not be applied for both diplopia and decreased visual acuity or field of vision in the same eye. When diplopia is present and there is also a ratable impairment of visual acuity or field of vision of both eyes the above diplopia ratings will be applied to the poorer eye while the better eye is rated according to the best corrected visual acuity or visual field.

(3) When the diplopia field extends beyond more than one quadrant or more than one range of degrees, the evaluation for diplopia will be based on the quadrant and degree range that provide the highest evaluation.

(4) When diplopia exists in two individual and separate areas of the same eye, the equivalent visual acuity will be taken one step worse, but no worse than 5/200.

[FR Doc. 88-18013 Filed 8-10-88; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6686

[ID-943-08-4220-10; I-23990]

Withdrawal of Public Land for Crooked River Fish Hatchery; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 12.28 acres of National Forest System Land from surface entry and mining for a period of 50 years for the Corps of Engineers to protect the proposed Crooked River Fish Hatchery. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: August 11, 1988.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1735

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following-described National Forest system lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. ch.2), but not from leasing under the mineral leasing laws to protect the Corps of Engineers Crooked River Fish Hatchery;

Boise Meridian—Nezperce National Forest

Parcel 1—Adult Facility

A parcel of land lying in unsurveyed Section 25, Township 29 North, Range 7 East of the Boise Meridian, Idaho County, State of Idaho, being more particularly described as follows:

Commencing at the northwest corner of Section 30, Township 29 North, Range 8 East of the Boise Meridian; thence South 0°16'39" West, a distance of 2,879.37 feet to the POINT OF BEGINNING; thence South 3°14'35" East, a distance of 370.26 feet; thence WEST, a distance of 215 feet; thence SOUTH, a distance of 460 feet; thence North 67°14'57" West, a distance of 168.08 feet; thence North 51°50'34" West, a distance of 89.02 feet; thence North 8°27'44" West, a distance of 91.24 feet; thence North 30°15'23" East, a distance of 138.92 feet; thence North 52°25'53" East, a distance of 82.01 feet; thence North 3°34'35" West, a distance of 80.16 feet; thence North 23°44'58" West, a distance of 136.56 feet; thence North 4°45'49" West, a distance of 120.42 feet; thence North 71°20'08" East, a distance of 389.54 feet to the point of beginning.

The parcel of land above described contains 4.34 acres, more or less.

Parcel 2—Freezer Site

A parcel of land located on the left (west) bank of the Crooked River, westerly of County Road No. 121, in the projected northeast quarter of unsurveyed Section 36, Township 28 North, Range 7 East of the Boise Meridian, Idaho County, State of Idaho, more particularly described as follows:

Commencing at a U.S. Army Corps of Engineers Survey Monument marked "85-95-1," the local grid coordinates of said monument being y, North 13,096.82 feet and x, East 12,311.12 feet; thence South 89°34'04" West, a distance of 189.13 feet to the POINT OF BEGINNING; thence EAST, a distance of 80 feet; thence SOUTH, a distance of 50 feet; thence WEST, a distance of 80 feet; thence NORTH, a distance of 50 feet to the point of beginning.

There is Excepted therefrom all that part of the above described parcel 2 lying within the right-of-way of said County Road No. 121.

The parcel of land above described contains 0.09 of an acre, more or less.

Parcel 3—Acclimation Facility

A parcel of land located on the left (west) bank of the Crooked River, easterly of Forest

Road No. 233 (County Road No. 121), north of the Orogrande Landing Strip, in the projected northwest quarter of unsurveyed Section 30, Township 28 North, Range 8 east of the Boise Meridian, Idaho County, State of Idaho, more particularly described as follows:

Beginning at a point, which is located on north (downstream) end of the Orogrande Landing Strip. Said point is a U.S. Army Corps of Engineers monument marked "86-26-3," the local grid coordinates of said monument being Y, North 16,131.327 feet X, East 14,137.709 feet; thence south 61°31'33" East, a distance of 139.12 feet to a point lying on the thread of the stream on the Crooked River; thence North 1°19'56" East, a distance of 86.02 feet to a point lying on the thread of the stream of said river; thence North 24°26'38" East, a distance of 24.17 feet to a point lying on the thread of the stream of said river; thence North 44°01'04" East, a distance of 495.05 feet to a point lying on the thread of the stream of said river; thence North 22°46'57" East, a distance of 54.23 feet to a point lying on the thread of the stream of said river; thence North 0°47'45" West, a distance of 72.01 feet to a point lying on the thread of the stream of said river; thence North 16°27'36" West, a distance of 91.76 feet to a point lying on the thread of the stream of said river; thence North 3°54'02" East, a distance of 44.10 feet to a point lying on the thread of the stream of said river; thence North 7°55'58" East, a distance of 123.18 feet to a point lying on the thread of the stream of said river; thence South 90°00'00" West, a distance of 455.00 feet to a point lying on the Easterly edge of Forest Road No. 233 (County Road No. 122); thence South 35°40'07" West, a distance of 152.63 feet to a point lying on the Easterly edge of said road; thence South 20°22'35" West, a distance of 37.34 feet to a point lying on the Easterly edge of said road; thence South 1°35'28" West, a distance of 36.01 feet to a point lying on the Easterly edge of said road; thence South 11°40'25" East, a distance of 123.56 feet to a point lying on the Easterly edge of said road; thence South 8°07'48" East, a distance of 77.78 feet to a point lying on the Easterly edge of said road; thence South 2°07'16" West, a distance of 81.06 feet to a point lying on the Easterly edge of said road; thence South 4°14'11" West, a distance of 54.15 feet to a point lying on the Easterly edge of said road; thence South 17°02'16" West, a distance of 64.85 feet to a point lying on the Easterly edge of said road; thence South 30°06'49" West, a distance of 57.80 feet to a point lying on the Easterly edge of said road; thence South 40°21'52" West, a distance of 26.25 feet to a point lying on the Easterly edge of said road; thence South 24°28'11" West, a distance of 51.56 feet to a point lying on the Easterly edge of said road; thence South 61°31'33" East, a distance of 140.00 feet to the point of beginning.

There is Excepted therefrom all that part of the above described Parcel 3 lying within the right-of-way of said Forest Road No. 233 (County Road No. 122).

The parcel of land above described contains 7.85 acres, more or less.

The three areas described aggregate 12.28 acres in Idaho County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

August 1, 1988.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 88-18161 Filed 8-10-88; 8:45 am]

BILLING CODE 4310-GG-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 7

[OST Docket No. 43466, Part 7—

Reissuance]

RIN 2105-AA05

Public Availability of Information; Freedom of Information Act Regulations

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This notice revises and reissues the Department of Transportation's regulations in 49 CFR Part 7 implementing the Freedom of Information Act (FOIA—5 U.S.C. 552). This is a complete revision of the regulations and includes changes necessary to implement the Freedom of Information Reform Act of 1986, the Uniform Freedom of Information Act Fee Schedule and Guidelines promulgated by the Office of Management and Budget, and, to some extent, changes necessary to meet requirements of Executive Order 12600, which imposes new requirements on government agencies with respect to the processing of requests under the FOIA for confidential business information. Revisions and additions to the regulations also take into account organizational changes since the last revision in 1975.

EFFECTIVE DATE: August 11, 1988.

FOR FURTHER INFORMATION CONTACT: Rebecca H. Lima, Chief, Freedom of Information Act Division, Office of the Assistant Secretary for Public Affairs, U.S. Department of Transportation, 400

Seventh Street SW., Washington, DC 20590, 202-366-4542.

SUPPLEMENTARY INFORMATION: No major revision of the Department of Transportation's regulations implementing the FOIA has been made since they were promulgated in 1975 (40 FR 7915, February 24, 1975). In the interim, a need has developed for more precise criteria to be used in processing FOIA requests and FOIA appeals; for codification of procedures used informally by the Department for notifying a submitter of confidential commercial or financial records of a request for these documents; and for additional appendices detailing procedures used by the Maritime Administration and the Research and Special Programs Administration, respectively, for the disclosure of information to the public. In addition, when the FOIA was amended by The Freedom of Information Reform Act of 1986 (Pub. L. 99-570, sections 1801-1804), substantial further revisions to parts of the regulations dealing with fees and fee waivers became necessary. Finally, the issuance of Executive Order 12600 (52 FR 23781, June 25, 1987), made it necessary for the Department to modify its proposed regulations pertaining to the processing of requests for confidential commercial information. Proposed regulations to respond to many of the needs for change were published in the *Federal Register* on October 17, 1985 (50 FR 42049). Additional proposed regulations were published in the *Federal Register* on November 6, 1987 (52 FR 42688). The final regulations have been changed in response to comments received concerning the two notices of proposed rulemaking.

Regarding appeals, the Department is reducing from 60 to 30 days the period in which an appeal must be submitted. When a denial is issued, the subject records are retained by the responsible FOIA officer until the appeal period expires, longer if there is an appeal, and much longer still if the appeal is denied. This retention is costly; as the number of FOIA requests has increased, the cost has become too burdensome. In our experience, it is not unreasonable to expect a requester to submit an appeal within 30 days.

Discussion of Comments

The Department received three sets of public comments in response to the notice of proposed rulemaking published on October 17, 1985 (first NPRM), and two sets of public comments in response to the supplemental notice of proposed rulemaking published on November 6, 1987 (second NPRM).

In response to the first NPRM, the Freedom of Information Clearinghouse (FOIC) objected on the general grounds that the proposed changes were unnecessary and had not been adequately justified. The Department disagrees. It is the Department's view that the preamble to the first NPRM included an adequate explanation and justification for the changes then proposed. In any event, in light of the enactment of The Freedom of Information Reform Act of 1986 and the issuance of Executive Order 12600, it is clear now that substantial changes in the Department's FOIA regulations are essential.

In specific comments concerning the first NPRM, FOIC objected to the proposed procedures for processing requests for business information, proposed § 7.57, for three reasons. First, FOIC said it is unclear when the notice and objection procedures apply. The Department agrees that some clarification is needed and has revised the first sentence of proposed § 7.57(a) to make it clear when the procedures apply. The wording of the final regulation also more closely conforms to that of Executive Order 12600.

The second objection by FOIC to proposed § 7.57 is that the procedures unnecessarily burden requesters by delaying the agency response. To meet this concern, FOIC recommends that the regulations of the National Highway Traffic Safety Administration (NHTSA), 49 CFR Part 512, be adopted for use throughout the Department. Under these regulations, a submitter must identify confidential information and justify confidentiality claims at the time the information is submitted to NHTSA. The Department does not anticipate that any significant delays will result from the codification of the business notification procedures. Procedures similar to those in proposed § 7.57 of the regulations have been used informally by the Department for some time. Also, while the NHTSA regulation has worked well, we are not prepared to adopt it for use by the entire Department. A significant portion of the business information submitted to NHTSA is from regulated parties such as automobile and tire manufacturers, and repeated dealings between NHTSA and members of regulated industries have demonstrated the value of pre-marking information and providing accompanying justifications in aid of evaluation of confidentiality claims. On the other hand, it is not clear that this approach would work as well throughout the Department. Since a significant amount of business information submitted to the

Department never is the subject of an FOIA request, the imposition of a general requirement that submitters assert and justify a claim for confidential treatment concurrent with the submission of business information could produce an unjustified and costly burden on many members of the public and on the Department. The Department will, however, continue to evaluate this FOIC recommendation as further changes to § 7.57 are considered pursuant to Executive Order 12600.

Finally, FOIC points out that the proposed business information procedures of § 7.57 do not provide requesters the same notice of agency decisions that they provide submitters. In response to Executive Order 12600, the Department has changed the proposed regulation to provide notice similar to that recommended by FOIC. The regulation does not, however, require that the requester be provided the same information that the submitter receives. Such a procedure would defeat the purpose of the business notification procedure in many cases by providing the requester with confidential commercial information before the submitter has had any opportunity to object.

Specific objections to proposed provisions pertaining to fees and fee waivers published in the first NPRM were also submitted by FOIC. These objections have been overtaken by events and are now moot. The second NPRM, published in response to the Freedom of Information Reform Act of 1986 and guidelines provided to agencies by the Office of Management and Budget (OMB) and the Department of Justice, significantly changed the proposed fee payment and fee waiver provisions to which FOIC objected.

In its comments submitted in response to the first NPRM, the Center for Auto Safety (CAS) said the proposed changes would blunt the acquisition of important consumer information from the Department and its operating elements by dramatically lowering the free-of-charge threshold, by increasing the per page copy charge by 400% and by establishing a 26% surcharge for fringe benefits. As noted above, comments concerning proposed changes in fees and fee waivers as published in the first NPRM have been overtaken by events. Under the revised regulations, consumers generally will have much greater access to information without having to pay a fee. The standard fee for photocopying has been revised downward from the earlier proposal of 20 cents per page to 10 cents per page (a charge consistent with the figures

submitted by CAS in its comments on the first NPRM), and the proposed surcharge for benefits has been lowered to 16% in accordance with uniform guidelines provided to agencies by OMB.

CAS also expressed concern that five changes proposed in the first NPRM were subtle attempts by the Department to make it more difficult for the public to gain access to information. Specifically, CAS noted that: (1) Proposed §§ 7.21 and 7.23 would delete the requirement for immediate notice to a requester of initial and final determinations; (2) proposed § 7.25 would change "date on which a determination is expected to be dispatched" to "date on which a determination is expected to be made"; (3) proposed § 7.53(d) would impose a positive duty on the requester to provide a detailed description of a requested record, whereas the current regulation uses the word "should" in this regard; (4) the proposed elimination of the provision for an administrative appeal where a requested record has not been made available would eliminate an important intra-agency check against dilatory personnel practices; and (5) the reference in proposed § 7.13 to information that the agency "wants to withhold" suggests a departure from the longstanding policy expressed in § 7.3 favoring maximum disclosure.

In proposing the changes to which CAS objected, the Department did not intend to make it more difficult for members of the public to obtain access to information, nor does the Department agree that the proposed changes would cause that effect. There is no necessity that the regulations include a requirement for immediate notice to a requester concerning an initial determination, since such notice is specifically required by the FOIA. Also, while not specifically required by the FOIA, such notice clearly is intended with respect to a final determination as well. Nevertheless, the final regulations will make it clear that immediate notice to a requester is required with respect to both an initial and final determination. The Department agrees that the regulation should require that the requester be notified of the "date on which a determination is expected to be dispatched" rather than the "date on which a determination is expected to be made." As CAS correctly observed, "dispatched" is used in the statute. The Department also agrees that the wording of proposed § 7.13, and proposed § 7.53(d) and § 7.81(c) could cause confusion. Accordingly, these provisions have been changed in the final

regulations to meet the concerns expressed by CAS.

CAS also stated that the proposed regulation may unlawfully alter and undercut the NHTSA regulation in 49 CFR Part 512, since it does not make it clear that 49 CFR Part 512 is the exclusive procedure for use in relation to information submitted to NHTSA. Proposed § 7.57 has been changed to clarify this.

An individual who submitted comments on the first NPRM generally supported the proposed changes as a vast improvement over the existing regulations. He recommended, however, that proposed § 7.53(a) be modified to eliminate the positive obligation to mark an envelope to show that it contains an FOIA request, that proposed § 7.95(a) be revised to take into account the differences between military pay and civilian pay and fringe benefits and that the wording of the fee schedule be clarified relative to charges for certified copies of documents. The Department agrees with the recommendation concerning proposed § 7.53(a). Accordingly, "must" in proposed § 7.53(a)(2), (3), and (4) has been replaced with "should" in the final regulations. For similar reasons, "shall" in proposed § 7.53(d) has in two places been changed to "should", and "must" in proposed § 7.81(e) (redesignated § 7.81(d) in the final regulations) has in two places been changed to "should." The final regulations have also been changed to take into account the differences between military pay and civilian pay and benefits. The Department does not agree that clarification is necessary with respect to fees charged for certified copies. This provision, as proposed, has been applied by the Department without difficulty for many years.

Comments on the second NPRM were submitted by The Reporters Committee for Freedom of the Press (RCFP) and jointly by Public Citizen Litigation Group (PCLG) and Freedom of Information Clearinghouse (FOIC). In general, RCFP urged the Department to reexamine and change its proposals concerning fee waiver and advance payment and to change its proposed business notification procedures to allow compliance with the time limitations of the FOIA.

Specifically, RCFP recommended that the Department merely reiterate the language of the statute concerning waiver of fees, and not include in its regulations the fee waiver guidelines developed by the Department of Justice. RCFP also states that the proposed procedures for waiver of fees would

violate the Paperwork Reduction Act by requiring requesters to write separate proofs of entitlement to fee waiver or reduction. Further, according to RCFP, the proposed fee waiver provisions do not consider the legitimacy of the public's interest in monitoring the Department's activities as a criterion for granting a public interest fee waiver; appearing instead to consider quantity of interest, magnitude of dissemination, and a host of other irrelevant criteria. The Department disagrees. Although the statutory standard for fee waivers is included in the final regulations, the Department also believes that the guidelines developed by the Department of Justice will be helpful when applying the general language of the statute to specific circumstances. For that reason, the guidelines are included in the final regulations.

The Department does not agree that its proposed procedures are in conflict with the Paperwork Reduction Act. Since that statute relates to information collection methods calling for answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, it is inapplicable to the procedures prescribed in the Department's FOIA regulations. The Department also disagrees that its proposed fee waiver provisions fail to consider the legitimacy of the public's interest in monitoring its activities. The Department's proposed regulations reiterate the statute as the basic criterion for fee waivers or reductions. Additional factors also are stated that can be of assistance in applying the statute. Consideration of other factors is not precluded by the regulations.

RCFP states that the proposed provisions for advance payment of fees will interfere with prompt provision of information to media requesters, because media requesters who had not established a record of timely payment before adoption of these regulations would need to await the assessment and mailing of a bill, return payment and await still other bureaucratic processes for recording payment and certifying release. RCFP also notes that there is no showing the requesters, particularly media requesters, have in the past failed to pay the Department fees. The basis for this comment by RCFP is not clear. Under the proposed regulations, media requesters rarely will be liable for any fees because of statutory fee limitations. Moreover, they frequently will be entitled to a waiver or reduction of any fees for which they could otherwise be liable. Advance payment, i.e., payment before work is commenced or continued

on a request, may be required under the Department's proposed regulations only if allowable charges are likely to exceed \$250 or the requester has failed promptly to pay fees for a prior FOIA request. These are both circumstances under which the FOIA clearly authorizes agencies to require advance payment of fees. It may be that the RCFP comment is in reference to the provisions in the proposed regulations that permit the collection of fees before the requested records are duplicated or delivered. If so, the Department does not agree that these are requirements for advance payment of fees as that term is used in the FOIA. The Department informally adopted internal procedures some time ago whereby a bill for any fees due is included in the initial determination letter and copies of requested records are either enclosed with the determination letter or dispatched immediately upon receipt of payment. This procedure has worked extremely well, and has significantly reduced the need for repeat billings and collection activities. The Department does not anticipate that the inclusion of this procedure in the final regulations will unnecessarily delay the delivery of documents to requesters.

RCFP urged the Department to modify its proposed regulations for notifying submitters of confidential commercial information to make it clear that the procedures do not obviate the agency's obligation to respond to the requester within 10 working days. The Department believes that proposed § 7.57 as published in the first NPRM was clear with respect to this issue. Nevertheless, proposed § 7.57 has been changed to conform to the language of Executive Order 12600.

In joint comments, PCLG and FOIC said agencies must engage in full notice and comment rulemaking with respect to fees and fee waiver provisions, should not adopt all of the fee guidelines developed by OMB and should reject the guidelines concerning fees waivers developed by the Department of Justice. The Department believes that the notice and opportunity for comment that has been provided with respect to fees and fee waivers is adequate. Although the Department's proposed regulations did not specifically include some of the guidance concerning fees that was developed by OMB, such as the definitions of "commercial use request", "educational institution" and "representative of the news media" which PCLG and FOIC urged the Department to reject, the public is hereby given notice that the Department will consider relevant OMB guidance,

including definitions, when necessary to determine the fees applicable to an FOIA request. The Department does not agree with PCLG and FOIC that in authorizing two hours of free search time Congress must have intended that agencies provide a requester with two hours of free computer operation time when requested information is maintained in an automated data system. It is the Department's view that the definition developed by OMB for use in computing fees for computer search time is reasonable and is consistent with the intent of the Congress. Accordingly, the Department has included that definition in its final regulations. The Department also disagrees that the fee waiver guidelines developed by the Department of Justice should be rejected in favor of those recommended by PCLG and FOIC. As indicated elsewhere in the discussion of comments, the Department will rely upon the statute as the primary guide when deciding whether a waiver or reduction of fees is required or appropriate. However, the guidelines developed by the Department of Justice have been included in the final regulation because the Department believes they will help when applying the statute. Consideration of other factors such as those recommended by PCLG and FOIC is not, however, precluded by the Department's final regulations.

In specific comments, PCLG and FOIC objected to the statement in proposed § 7.97(e) that a waiver or reduction of the fees that would otherwise be applicable to a particular request is a discretionary determination on the part of the official(s) having initial denial authority. They state that fee waivers or reductions are mandatory when the statutory standard is met. The Department agrees that the statute imposes a positive obligation to waive or reduce fees when the statutory standard is met, and that the sentence to which PCLG and FOIC objected could be misinterpreted. The Department also finds upon further review that the sentence objected to is not necessary. Accordingly, it has been deleted from the final regulations.

PCLG and FOIC also said that the provisions for advance payment of fees in proposed § 7.93(e) allow the agency to require advance payments where there is no history of payment for a particular requester, which goes beyond what the statute permits. The Department disagrees. The FOIA permits agencies to require advance payment of fees if: (1) The requester has previously failed to pay fees in a timely fashion, or (2) the

agency has determined that the fee will exceed \$250. Proposed § 7.93(e) applies to the second situation only. Under those circumstances, the FOIA authorizes the Department to require all requesters to pay fees in advance. However, the Department has decided not to adopt such a policy because it would unnecessarily delay the release of records to requesters who have a history of prompt payment of FOIA fees. Under proposed § 7.93(e), advance payment may be required only if the Department has determined that the fees will exceed \$250 and the requester has no history of payment. This is clearly permissible under the FOIA.

PCLG and FOIC also objected to the Department's proposal to impose search charges even when no documents are found or released. They state that this will intimidate requesters from making legitimate requests, and that Congress never intended or anticipated that fees would be charged where no documents were found or released. The Department disagrees. Specific fee limitations in the FOIA reduce the likelihood that requesters will be intimidated when considering submission of legitimate requests. Also, the Department's regulations are designed to ensure that a requester is informed in advance of anticipated fees and given an opportunity to discuss the request with knowledgeable persons who may be able to help avoid a needless search or a search that is too broad. The FOIA specifically authorizes agencies to charge search fees and, in limited circumstances, review charges. Congress undoubtedly was aware that some agency searches will disclose no responsive records, and that even if responsive records are found they may be withheld if exempt. Therefore, it is the Department's view that if Congress had intended to permit agencies to charge only for successful searches that result in the release of documents this limitation would have been clearly set out in the statute, as were several other fee limitations. Accordingly, the proposed provisions concerning search fees have not been changed in the final regulations.

In addition to the changes discussed above, the final regulations have been changed to correct minor errors in citations and office addresses and to bring the language of the regulations into conformity with that of statutes revised while the rulemaking project was pending. Minor editorial changes also were made.

Regulatory Evaluation

The Department has determined that this rule is not a major rule under

Executive Order 12291 because it would have an economic impact of less than \$10 million. However, this rule is significant under the Department's Regulatory Policies and Procedures [44 FR 11034, February 26, 1979] since it concerns a matter in which there is a substantial public interest or controversy. The Department has also determined that the expected economic impact of the rule is so minimal that a full regulatory evaluation is unwarranted. For this reason, I certify that, under the criteria of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This Department has no reason to believe that small entities, in particular, would be seriously affected by this rule.

List of Subjects in 49 CFR Part 7

Freedom of information.
Administrative practice and procedure.
Records.

Issued in Washington, DC, on August 1, 1988.

Jim Burnley,
Secretary of Transportation.

In consideration of the foregoing, 49 CFR Part 7 is revised to read as follows:

PART 7—PUBLIC AVAILABILITY OF INFORMATION

Subpart A—Applicability and Policy

Sec.

- 7.1 Applicability.
- 7.3 Policy.
- 7.5 Definitions.

Subpart B—General

- 7.11 Administration of part.
- 7.13 Records containing both available and unavailable information.
- 7.15 Protection of records.

Subpart C—Time Limits

- 7.21 Initial determination.
- 7.23 Final determination.
- 7.25 Extension.

Subpart D—Publication in the Federal Register

- 7.31 Applicability.
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Authority: 5 U.S.C. 552; 31 U.S.C. 9701; 49 U.S.C. 322.

Subpart A—Applicability and Policy

§ 7.1 Applicability.

(a) This part implements section 552 of Title 5, United States Code, and prescribes rules governing the availability to the public of records of the Department of Transportation.

(b) Subpart G of this part describes the records that are not required to be disclosed under this part.

(c) Appendices A through J of this part:

(1) Describe the places and the times at which records will be available for inspection and copying;

(2) Define the kinds of records located at each facility;

(3) Identify the location of the indices to such records; and

(4) Identify the officials having authority to deny requests for disclosure of records under this part.

(d) The Assistant Secretary for Public Affairs may amend Appendix A to this part to reflect any changes in the items covered by that appendix. The head of an operating element concerned may amend the appendix applicable to that element to reflect any changes in the items covered by that appendix.

(e) This part applies only to records that exist as of the date of receipt of the request by the appropriate office, in accordance with section 7.53. The Department is not required to create, compile or procure a record solely for the purpose of making it available under this part.

(f) Indices are maintained to reflect all records subject to Subpart E of this part, and are available for public inspection and copying as provided in Appendices A through J to this part.

§ 7.3 Policy.

In implementing section 552 of Title 5, United States Code, it is the policy of the Department of Transportation to make information available to the public to the greatest extent possible in keeping with the spirit of that section. Therefore, all records of the Department, except those that the Department specifically determines must not be disclosed in the interest of national defense or foreign policy, for the protection of private rights and commercial interests or for the efficient conduct of public business to the extent permitted by the Freedom of Information Act, are declared to be available for public inspection and copying as provided in this part. Each officer and employee of the Department is directed to cooperate to this end and to make records available to the public promptly and to the fullest extent consistent with this policy. A record may not be withheld from the public solely because its release might suggest administrative error or embarrass an officer or employee of the Department.

§ 7.5 Definitions.

As used herein, unless the context requires otherwise:

"Administrator" means the head of each operating element of the Department and includes the Commandant of the Coast Guard.

"Department" or "DOT" means the Department of Transportation, including the Office of the Secretary and the following operating elements:

(a) The United States Coast Guard.

(b) The Federal Aviation Administration.

(c) The Federal Highway Administration.

(d) The Federal Railroad Administration.

(e) The National Highway Traffic Safety Administration.

(f) The Urban Mass Transportation Administration.

(g) The Saint Lawrence Seaway Development Corporation.

(h) The Maritime Administration.

(i) The Research and Special Programs Administration.

"Record" includes any writing, drawing, map, recording, tape, film, photograph or other documentary material by which information is preserved. The term also includes any such documentary material stored by computer. However, the term does not include uncirculated personal notes, papers and other documents created and retained solely for the personal convenience of Departmental personnel and over which the agency exercises no control. If a request is made for a personal record of a DOT official or employee, that request is denied, since it is not within the Department's authority to disclose such records and the Freedom of Information Act does not apply to them. However, until the requester's appeal and litigation rights expire, DOT retains a copy of such records for the benefit of any reviewing court. This retention does not constitute control as that term is used here.

"Secretary" means the Secretary of Transportation or any person to whom the Secretary has delegated authority in the matter concerned.

Subpart B—General

§ 7.11 Administration of part.

Except as provided in Subpart H of this part, authority to administer this part in connection with the records of the Office of the Secretary (including the Office of the Inspector General) and to issue determinations with respect to initial requests for such records under this part is delegated to the Assistant Secretary for Public Affairs. Authority to administer this part in connection with records of each operating element is delegated to each Administrator, who may redelegate to officers of that element the authority to administer this part in connection with defined groups of records. However, each Administrator may redelegate the duties

under Subpart H of this part to consider appeals of initial denials of requests for records only to his or her deputy or to not more than one other officer who reports directly to the Administrator and who is located at the headquarters of that operating element.

§ 7.13 Records containing both available and unavailable information.

If a record contains information that the Department determines cannot be disclosed, but also contains reasonably segregable information that may not be withheld, the latter information shall be made available.

§ 7.15 Protection of records.

(a) No person may, without permission, remove any record made available to him or her for inspection and copying under this part from the place where it is made available. In addition, no person may steal, alter, mutilate, obliterate or destroy, in whole or in part, such a record.

(b) Section 641 of Title 18 of the United States Code provides, in pertinent part, for criminal penalties for embezzlement or theft of government records.

(c) Section 2071 of Title 18 of the United States Code provides, in pertinent part, for criminal penalties for the willful and unlawful concealment, mutilation or destruction of, or the attempt to conceal, mutilate or destroy, government records.

Subpart C—Time Limits

§ 7.21 Initial determination.

An initial determination whether to release a record requested pursuant to Subpart F shall be made within ten working days after the request is received by the appropriate office in accordance with section 7.53, except that this time limit may be extended by up to ten working days in accordance with § 7.25. The person making the request will be notified immediately of such determination. If the determination is to grant this request, the desired record shall be made available as promptly as possible. If the determination is to deny the request the person making the request shall be notified in writing, at the same time he or she is notified of such determination, of the reason for the determination; the right of such person to appeal the determination; and the name and title of each person responsible for the initial determination to deny the request.

§ 7.23 Final determination.

A determination with respect to any appeal made pursuant to § 7.81 shall be

made within twenty working days after receipt of such appeal except that this time limit may be extended by up to ten working days in accordance with § 7.25. The person making the request will be notified immediately of such determination, pursuant to § 7.81.

§ 7.25 Extension.

In unusual circumstances as specified in this section, the time limits prescribed in § 7.21 and § 7.23 may be extended by written notice to the person making the request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. Such notice may not specify a date that would result in a cumulative extension of more than ten working days. As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request:

(a) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(b) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(c) The need for consultation, which shall be conducted with all practicable speed, with any other agency or DOT operating element having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

Subpart D—Publication in Federal Register

§ 7.31 Applicability.

This subpart implements section 552(a)(1) of Title 5, United States Code, and prescribes rules governing the publication in the **Federal Register** of the following:

(a) Descriptions of the organization of the Department, including its operating elements and the established places at which the officers from whom, and the methods by which, the public may secure information and make submittals or requests or obtain decisions;

(b) Statements of the general course and methods by which the Department's functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions

as to the scope and contents of all papers, reports, or examinations;

(d) Substantive rules of general applicability adopted as authorized by law and statements of general policy or interpretations of general applicability formulated and adopted by the Department; and

(e) Each amendment, revision, or repeal of any material listed in paragraphs (a) through (d) of this section.

§ 7.33 Publication required.

(a) *General.* The material described in § 7.31 shall be published in the **Federal Register**. For the purposes of this paragraph, material that will reasonably be available to the class of persons affected by it will be considered to be published in the **Federal Register** if it has been incorporated by reference therein with the approval of the Director of the Federal Register.

(b) *Effect of nonpublication.* Except to the extent that a person has actual and timely notice of the terms thereof, no person may in any manner be required to resort to, or be adversely affected by, any procedure or matter required to be published in the **Federal Register**, but not so published.

Subpart E—Availability of Opinions, Orders, Staff Manuals, Statements of Policy and Interpretations: Indices

§ 7.41 Applicability.

(a) This subpart implements section 552(a)(2) of Title 5, United States Code. It prescribes the rules governing the availability, for public inspection and copying, of the following:

(1) Any final opinion (including a concurring or dissenting opinion) or order made in the adjudication of a case.

(2) Any policy or interpretation that has been adopted under the authority of the Department, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(3) Any administrative staff manual or instruction to staff that affects any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public. However, this does not include staff manuals or instructions to staff concerning internal operating rules, practices, guidelines and procedures for Departmental

inspectors, investigators, law enforcement officers, examiners, auditors, and negotiators and other information developed predominantly for internal use, the release of which could significantly risk circumvention of agency regulations or statutes. Indices of materials listed in this paragraph shall be maintained as specified in Appendices A-J of this part.

(b) Any material listed in paragraph (a) of this section that is not made available for public inspection and copying, or that is not indexed as required by § 7.45, may not be cited, relied on, or used as precedent by the Department to adversely affect any member of the public unless the person to whose detriment it is relied on, used, or cited has had actual timely notice of that material.

(c) This subpart does not apply to material that is published in the **Federal Register** or is covered by Subpart G of this part.

§ 7.43 Deletion of identifying detail.

Whenever it is determined to be necessary to prevent a clearly unwarranted invasion of personal privacy, identifying details shall be deleted from any record covered by Subpart E of this part that is published or made available for inspection. A full explanation of the justification for the deletion shall accompany the record published or made available for inspection.

§ 7.45 Access to materials and indices.

(a) Except as provided in paragraph (b) of this section, material listed in § 7.41(a) shall be made available for inspection and copying by any member of the public at document inspection facilities of the Department. The index of materials available at each facility shall be published in the **Federal Register** quarterly and shall also be located at the facility. Information as to the kinds of materials available at each facility may be obtained from the facility or the headquarters of the operating element of which it is a part.

(b) The material listed in § 7.41(a) that is published and offered for sale shall be indexed, but is not required to be kept available for public inspection. Whenever practicable, however, it will be made available for public inspection at any document inspection facility maintained by the Office of the Secretary or an operating element, whichever is concerned.

§ 7.47 Index of public materials.

The index of material subject to public inspection and copying under this

subpart shall cover all material issued, adopted, or promulgated after July 4, 1967; however, earlier material may be included in the index to the extent practicable. Each index shall contain instructions on how to use it.

§ 7.49 Copies.

Copies of any material covered by this subpart that is not published and offered for sale may be ordered, upon payment of the appropriate fee, from the office indicated in § 7.53. Copies will be certified upon request and payment of the fee prescribed in § 7.95(f).

Subpart F—Availability of Reasonably Described Records

§ 7.51 Applicability.

This subpart implements section 552(a)(3) of Title 5, United States Code, and prescribes the regulations governing public inspection and copying of reasonably described records.

§ 7.53 Public availability of records.

(a) Each person desiring access to or a copy of a record covered by this subpart shall comply with the following provisions:

(1) A written request must be made for the record.

(2) Such request should indicate that it is being made under the Freedom of Information Act.

(3) The envelope in which the request is sent should be prominently marked: "FOIA."

(4) The request should be addressed to the appropriate office as set forth in paragraph (c) of this section.

(b) If the requirements of paragraph (a) of this section are not met, treatment of the request will be at the discretion of the agency. The ten-day time limit described in § 7.21 shall not start to run until the request has been identified, or would have been identified with the exercise of due diligence, by an employee of the Department as a request pursuant to the Freedom of Information Act and has been received by the office to which it should have been originally sent.

(c) Each person desiring access to or a copy of a record covered by this subpart that is located in the Office of the Secretary shall make a written request to the Assistant Secretary for Public Affairs, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Each person desiring access to or a copy of a record covered by this subpart that is located in an operating element shall make a written request to that element at the address set forth in the applicable appendix to this part. If the person

making the request does not know where in the Department the record is located, he or she may make inquiry of the Assistant Secretary for Public Affairs as to its location.

(d) Each request should describe the particular record to the fullest extent possible. The request should describe the subject matter of the record, and, if known, indicate the date when it was made, the place where it was made, and the person or office that made it. If the description does not enable the office handling the request to identify or locate the record sought, that office shall notify the person making the request and, to the extent possible, indicate the additional data required.

(e) Each record made available under this subpart shall be made available for inspection and copying during regular business hours at the place where it is located, or photocopying may be arranged with the copied materials being mailed to the requester upon payment of the appropriate fee. Original records ordinarily will be copied except in those instances where, in the Department's judgment, copying would endanger the quality of the original or raise the reasonable possibility of irreparable harm to the record. In these instances, copying of the original would not be in the public interest. In any event, original records will not be released from custody.

(f) If a requested record is known not to exist in the files of the agency, or to have been destroyed or otherwise disposed of, the requester shall be so notified.

(g) Fees will be determined in accordance with Subpart I and the applicable appendix or appendices to this Part.

(h) Notwithstanding paragraphs (a) through (g) of this section, informational material, such as news releases, pamphlets and other materials of that nature that are ordinarily made available to the public as a part of any information program of the Government will be available upon oral or written request. There will be no fee for individual copies of that material so long as they are in supply. In addition, the Department will continue to respond, without charge, to routine oral or written inquiries that do not involve the furnishing of records.

§ 7.55 Request for records of concern to more than one Government organization.

(a) If the release of a record covered by this subpart would be of concern to both this Department and another Federal agency, the determination as to release will be made only after

consultation with the other interested agency.

(b) If the release of the record covered by this subpart would be of concern to both this Department and a State or local government, a territory or possession of the United States, or a foreign government, the determination as to release will be made by the Department only after consultation with the other interested State or local government or foreign government.

(c) Whenever a request is made for: (1) A record containing information that has been classified by another Federal agency or that may be eligible for classification by such an agency; or (2) a record containing information that relates to an investigation of a possible violation of criminal law or to a law enforcement proceeding and that was generated or originated by another Federal agency, the Office of the Secretary or the responsible operating element, whichever the case be, shall refer the request, or the portion thereof that pertains to the record in question, to the originating agency for a releasability determination. The requester shall be notified of the referral and informed of the name and address of the agency to which the request, or portion thereof, has been referred, unless such notification might jeopardize a law enforcement proceeding or have an adverse effect on national security matters.

§ 7.57 Request for business information submitted by a private party.

(a) If a request is received for information which has been designated by the submitter as confidential commercial information, or which the Department has some other reason to believe may contain trade secrets or other commercial or financial information of the type described in section 7.69 of Subpart G, the submitter of such information shall, except as is provided in paragraphs (c) and (d) of this section, be notified expeditiously and asked to submit any written objections to release. At the same time, the requester shall be notified that notice and an opportunity to comment are being provided to the submitter. The submitter shall, to the extent permitted by law, be afforded a reasonable period of time within which to provide a detailed statement of any such objections. The submitter's statement shall specify all grounds for withholding any of the information. The burden shall be on the submitter to identify all information for which exempt treatment is sought and to persuade the agency

that the information should not be disclosed.

(b) The Office of the Secretary or the responsible operating element, whichever the case may be, shall, to the extent permitted by law, consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever a decision is made to disclose the business information over the objection of a submitter, the office responsible for the decision shall forward to the submitter a written notice which shall include:

- (1) A statement of the reasons for which the submitter's disclosure objections were not sustained;
- (2) A description of the business information to be disclosed; and
- (3) A specific disclosures date. Such notice of intent to disclose shall, to the extent permitted by law, be forwarded to the submitter a reasonable number of days prior to the specified date upon which disclosure is intended. At the same time the submitter is notified, the requester shall be notified of the decision to disclose information.

(c) The notice requirements of this section shall not apply if:

- (1) The office responsible for the decision determines that the information should not be disclosed;
- (2) The information lawfully has been published or otherwise made available to the public; or
- (3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(d) The procedures established in this section shall not apply in the case of:

- (1) Business information submitted to the National Highway Traffic Safety Administration.
- (2) Information contained in a document to be filed or in oral testimony that is sought to be withheld pursuant to Rule 39 of the Rules of Practice (14 CFR 302.39), and in Aviation Economic Proceedings.

(e) Whenever a requester brings suit seeking to compel disclosure of confidential commercial information, the Office of the Secretary or the responsible operating element, whichever the case may be, shall promptly notify the submitter.

Subpart G—Exemptions

§ 7.61 Applicability.

This subpart implements section 552(b) of Title 5, United States Code, which exempts certain records from the public disclosure requirements of section 552(a). The Department will, however, release a record authorized to

be withheld under §§ 7.65 through 7.79 unless it determines that the release of that record would be inconsistent with a purpose of the section concerned. Examples given in §§ 7.63 through 7.79 of records included within a particular statutory exemption are only illustrative and do not define all types of records covered by the exemption.

§ 7.63 Records relating to matters that are required by Executive Order to be kept secret.

Records relating to matters that are specifically authorized to be kept secret in the interest of national defense or foreign policy shall be exempt from public disclosure. Records exempt under this provision include but are not limited to those within the scope of the following, and any further amendment of any of them, but only to the extent that the records are in fact properly classified pursuant to such Executive Order. These records shall not be made available for public inspection.

- (a) Executive Order 12356 of April 2, 1982 (3 CFR, 1982 Comp., p. 166);
- (b) Executive Order 12065 of June 28, 1978, as amended, (3 CFR, 1978 Comp., p. 190);
- (c) Executive Order 11652 of March 8, 1972 (3 CFR, 1971-1975 Comp., p. 678);
- (d) Executive Order 10865 of February 20, 1960 (3 CFR, 1959-1963 Comp., p. 398);
- (e) Executive Order 10501 of November 5, 1953 (3 CFR, 1949-1953 Comp., p. 979); and
- (f) Executive Order 10104 of February 1, 1950 (3 CFR, 1949-1953 Comp., p. 298).

§ 7.65 Records related solely to internal personnel rules and practices.

(a) Records related solely to internal personnel rules and practices that are within the statutory exemption include memoranda pertaining to personnel matters such as staffing policies and policies and procedures for the hiring, training, promotion, demotion, and discharge of employees, and management plans, records, or proposals involving labor-management relationships. Also included within the statutory exemption are staff manuals or instructions concerning predominantly internal operating rules, practices, guidelines, procedures, and administrative data and handling instructions for Departmental personnel such as inspectors, investigators, examiners, auditors, and negotiators.

(b) The purpose of this section is to authorize the protection of those records in which there is slight public interest or which, if released, would substantially impair the performance of duties of Departmental employees or significantly

risk circumvention of agency regulations or statutes.

§ 7.67 Records exempted from disclosure by statute.

(a) Records relating to matters that are specifically exempted from disclosure by statute (other than section 552(b) of Title 5, United States Code) include, but are not limited to, those covered by the following:

- (1) Section 3771 of Title 18, United States Code, in conjunction with Rule 6(e) of the Federal Rules of Criminal Procedure, protecting grand jury material.
- (2) Section 106 of the Highway Safety Act of 1966 (Pub. L. 89-564, 80 Stat. 731), protecting information identifying individuals who are the subject of highway traffic accident investigations.
- (3) Section 206(c)(1) of the National Driver Register Act of 1982 (23 U.S.C. 401 (note)) and the National Driver Register Act, Pub. L. 86-660, as amended (23 U.S.C. 313 (note)), protecting information concerning individuals included in reports of State driver licensing officials to the Department.
- (4) Section 3315(b) of Title 46, United States Code, protecting the source of reports of defects and imperfections of vessels.
- (5) Section 7319 of Title 46, United States Code, protecting the names, addresses, and next of kin of merchant seamen and entries made in records pertaining to merchant seamen.
- (6) Section 10311(d) of Title 46, United States Code, protecting records of the discharge of merchant seamen.
- (7) Section 1173(c)(1)(D)(3) of Title 46, United States Code, protecting wage and benefit cost data for employees covered by collective-bargaining agreements for vessels receiving operating-differential subsidy payments.
- (8) Section 1173(d) of Title 46, United States Code, protecting certain foreign wage cost computations associated with the operation of foreign vessels.
- (9) Section 6102 of Title 46, United States Code, protecting information derived from boating safety accident reports compiled by a State.
- (10) Section 316(d)(2) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1357(d)(2)), protecting information obtained or generated in the conduct of research and development of systems and procedures to protect persons and property aboard aircraft.
- (11) Section 902(f) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1472(f)), relating to information obtained by examining the accounts, records, or memoranda of an air carrier.

(12) Section 1001 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1481), so far as it relates to the secrecy of acts and proceedings when requested on grounds of national defense.

(13) Section 1104 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1504), protecting information, which, if disclosed, would prejudice the formulation and presentation of positions of the United States in international aviation negotiations or adversely affect the competitive position of any United States air carrier in foreign air transportation.

§ 7.69 Trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(a) Trade secrets and commercial or financial information obtained from a person and privileged or confidential are within this statutory exemption. This includes:

(1) Commercial or financial information which, if disclosed, is likely to cause substantial harm to the competitive position of the submitter of the requested information;

(2) Commercial or financial information which if disclosed, is likely to impair the Government's ability to obtain necessary information in the future through purely voluntary cooperation;

(3) Commercial or financial information customarily subjected to an attorney-client or similar evidentiary privilege; or

(4) Information that constitutes a trade secret.

(5) Commercial or financial information which, if disclosed, would impair any other identifiable government interest or hinder agency officials in carrying out their mandate.

(b) The purpose of this section is to exempt from mandatory disclosure trade secrets and commercial or financial information obtained from a person and privileged or confidential. This section assures the confidentiality of trade secrets and commercial or financial information obtained by the Department through questionnaires and required reports to the extent that the information would not customarily be made public by the person from whom it was obtained. In any case in which the Department has obligated itself not to disclose trade secrets and commercial or financial information it receives, this section indicates the Department's intention to honor that obligation to the extent permitted by law. In addition, this section recognizes that certain materials, such as research data and materials, formulae, designs, and

architectural drawings, have significance as items of property acquired, in many cases, at public expense. Such material may be treated as exempt from mandatory disclosure in any case in which similar proprietary material in private hands would be held in confidence. To the extent feasible, any person submitting information to the Department which may qualify for this exemption should request that the information not be disclosed.

§ 7.71 Intragovernmental exchanges.

(a) Any record prepared by a Government officer or employee (including those prepared by a consultant or advisory body) for internal Government use is within the statutory exemption to the extent it contains:

(1) Opinions, advice, deliberations, or recommendations made in the course of developing official action by the Government, but not actually made a part of that official action.

(2) Confidential communications between a Government attorney or an attorney acting on behalf of the Government and his or her client relating to a legal matter for which the client has sought professional advice.

(3) Information prepared by a Government attorney or an attorney acting on behalf of the Government in anticipation of litigation.

(4) Confidential commercial information generated by the Government where disclosure of such information would prejudice the Government's bargaining position in commercial transactions. Examples of records covered by this section include staff memoranda containing advice, opinions, recommendations, suggestions, or exchanges of views, preliminary to final agency decision or action, with the exception of factual information, unless such information is inextricably intertwined with deliberative material; draft documents such as draft versions of audit reports prepared by the Office of Inspector General; appraisals of property to be condemned by the Government; legal opinions and/or advice rendered by a Government attorney or an attorney acting on behalf of the Government and based on information communicated in confidence by the client; memoranda and other documents prepared by a Government attorney or an attorney acting on behalf of the Government setting forth strategy with regard to pending or probable future litigation and not otherwise made a matter of public record in a particular legal proceeding; and material intended for public release at a specified future time, if premature

disclosure would be detrimental to orderly decisionmaking by the Department.

(b) The purpose of this section is to protect internal records that are not routinely available by law to another party in litigation with the Government.

§ 7.73 Protection of personal privacy.

(a) Any of the following personnel, medical or similar records are within the statutory exemption if disclosure would result in a clearly unwarranted invasion of personal privacy:

(1) Personnel and background records personal to any officer or employee of the Department, or other person, including his or her residential address.

(2) Medical histories and medical records concerning individuals, including applicants for licenses.

(3) Any other detailed record containing personal information identifiable with a particular person.

(b) The purpose of this section is to provide a proper balance between the protection of personal privacy and the preservation of the public's right to Department information by authorizing the protection of intimate details of a personal nature which, if released, might unjustifiably invade an individual's privacy.

§ 7.75 Records or information compiled for law enforcement purposes.

(a) Files compiled for law enforcement purposes by the Department or any other Federal, State, or local agency, including those files compiled for the enforcement of regulations, are within the statutory exemption to the extent that production of such records or information could reasonably be expected to interfere with enforcement proceedings; would deprive a person of a right to a fair trial or an impartial adjudication; could reasonably be expected to constitute an unwarranted invasion of personal privacy; could reasonably be expected to disclose the identity of a confidential source and, in the case of a record compiled for a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or could reasonably be expected to

endanger the life or physical safety of any individual.

(b) The purpose of this section is to protect law enforcement files from premature disclosure, including files prepared in connection with related judicial or administrative proceedings. It includes the enforcement not only of criminal statutes but all kinds of laws and regulations.

§ 7.77 Reports of financial institutions.

Any material contained in or related to any examination, operating, or condition report prepared by, or on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions is within the statutory exemption.

§ 7.79 Geological and geophysical information.

Any geological or geophysical information and data (including maps) concerning wells is within the statutory exemption.

Subpart H—Procedures for Appealing Decisions Not To Disclose Records and/or Waive Fees

§ 7.81 General.

(a) Each officer or employee of the Department who, upon a request by a member of the public for a record under this part, makes a determination that the record is not to be disclosed, shall give a written statement of the reasons for that determination to the person making the request; and indicate the names and titles or positions of each person responsible for the initial determination not to comply with such request, and the availability of an appeal within the Department.

(b) When a request for waiver of fees, pursuant to § 7.97(c) of this part, has been denied in whole or in part, the requester may appeal the denial.

(c) Any person to whom a record has not been made available within the time limits established by Subpart C and any person who has been given a determination pursuant to paragraph (a) of this section that a record he or she requested will not be disclosed may appeal to the head of the operating element concerned or, in the case of the Office of the Secretary, to the General Counsel of the Department. Any person who has not received an initial determination on his or her request within the time limits established by Subpart C can seek immediate judicial review. Judicial review may be sought without the need to submit first an administrative appeal. Judicial review may be sought in the United States District Court for the judicial district in

which the requester resides or has his or her principal place of business, the judicial district in which the records are located, or in the District of Columbia. A determination that a record will not be disclosed and/or that a request for a fee waiver or reduction will not be granted does not constitute final agency action for the purpose of judicial review unless:

(1) It was made by the head of the operating element concerned (or his or her designee), or the General Counsel, as the case may be; or

(2) The applicable time limit has passed without a determination on the initial request or the appeal, as the case may be, having been made.

(d) Each appeal must be made in writing within thirty days from the date of receipt of the original denial and should include all information and arguments relied upon by the person making the request. Such letter should indicate that it is an appeal from a denial of a request made under the Freedom of Information Act. The envelope in which the appeal is sent should be prominently marked: "FOIA Appeal." If these requirements are not met, the twenty-day limit described in § 7.23 will not begin to run until the appeal has been identified, or would have been identified with the exercise of due diligence, by an employee of the Department as an appeal under the Freedom of Information Act and has been received, or should have been received, by the appropriate office.

(e) Whenever the head of the operating element concerned, or the General Counsel, as the case may be, determines it to be necessary, he or she may require the person making the request to furnish additional information, or proof of factual allegations, and may order other proceedings appropriate in the circumstances. The decision of the head of the operating element concerned, or the General Counsel, as the case may be, as to the availability of the record or the appropriateness of a fee waiver or reduction constitutes final agency action for the purpose of judicial review.

(f) The decision of the head of the operating element concerned, or the General Counsel, as the case may be, not to disclose a record under this part or not to grant a request for a fee waiver or reduction is considered to be a denial by the Secretary for the purpose of section 552(a)(4)(B) of title 5, United States Code.

(g) Any final determination by the head of an operating element or his or her designee identified in Appendices B through J of this part, not to disclose a record under this part, or not to grant a request for a fee waiver or reduction, is

subject to concurrence by the General Counsel or his or her designee.

(h) Upon a determination that an appeal will be denied, the requester shall be informed in writing of the reasons for the denial of the request, and the names and titles or positions of each person responsible for the determination, and that judicial review of the determination is available in the United States District Court for the judicial district in which the requester resides or has his or her principal place of business, the judicial district in which the requested records are located, or the District of Columbia.

Subpart I—Fees

§ 7.91 General.

(a) This subpart prescribes fees for services performed for the public under Subparts E and F of this part by the Department.

(b) All terms defined by the Freedom of Information Act apply to this subpart, and the term "hourly rate" means the actual hourly base pay for a civilian employee or, for members of the Coast Guard, the equivalent hourly pay rate computed using a 40 hour week and the member's normal basic pay and allowances.

(c) This subpart applies to all employees of the Department, including those of non-appropriated fund activities of the United States Coast Guard and the Maritime Administration.

(d) This subpart does not apply to any special study, special statistical compilation, table, or other record requested under 49 U.S.C. 329(c). The fee for the performance of such a service is the actual cost of the work involved in compiling the record. All such fees received by the Department in payment of the cost of such work are deposited in a separate account administered under the direction of the Secretary, and may be used for the ordinary expenses incidental to providing the information.

(e) This subpart does not apply to requests from record subjects for records about themselves filed in Departmental systems of records. Fees for such requests are to be determined in accordance with the Privacy Act of 1974, as implemented by Department of Transportation regulations (49 CFR Part 10).

§ 7.93 Payment of fees.

(a) The fees prescribed in this subpart may be paid by check, draft, or money order, payable to the Treasury of the United States. However, in the case of the Saint Lawrence Seaway Development Corporation, all fees

resulting from a request to that operating element shall be made payable to the Saint Lawrence Seaway Development Corporation.

(b) Charges may be assessed by the Department for time spent searching for requested records even if the search fails to locate the records or the records located are determined to be exempt from disclosure. In addition, if records are requested for commercial use, the Department may assess a fee for time spent reviewing any responsive records located to determine whether they are exempt from disclosure.

(c) When it is estimated that the search charges, review charges, duplication fees or any combination of fees that could be charged to the requester will likely exceed \$25, the requester shall be notified of the estimated amount of the fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. The notice shall also inform the requester how to consult with appropriate Departmental officials with the object of reformulating the request to meet his or her needs at a lower cost.

(d) Payment of fees may be required by the Department prior to actual duplication of delivery of any releasable records to a requester. However, advance payment of fees, i.e., payment before work is commenced or continued on a request, may not be required unless:

(1) Allowable charges that a requester may be required to pay are likely to exceed \$250; or

(2) The requester has failed to pay within 30 days of the billing date fees charged for a previous FOIA request.

(e) When paragraph (d)(1) of this section applies, the requester shall be notified of the likely cost and, where he or she has a history of prompt payment of FOIA fees, requested to furnish satisfactory assurance of full payment. Where no history of payment exists, the requester may be required to make advance payment of any amount up to the full estimated charges.

(f) When paragraph (d)(2) of this section applies, the requester shall be required to demonstrate that the fee has, in fact, been paid or to pay the full amount owed, including any applicable interest, late handling charges and penalty charges as discussed below. The requester shall also be required to make an advance payment of the full amount of the estimated fee before processing of a new request or continuation of a pending request is begun.

(g) The Department will assess interest on an unpaid bill starting on the 31st day following the day on which the notice of the amount due is first mailed

to the requester. Interest will accrue from the date of the notice of amount due and will be at the rate prescribed in section 3717 of Title 31, U.S.C. Receipt by the Department of a payment for the full amount of the fees owed within 30 calendar days after the date of the initial billing will stay the accrual of interest, even if the payment has not been processed.

(h) If payment of fees charged is not received within 30 calendar days after the date the initial notice of the amount due is first mailed to the requester, an administrative charge will be assessed by the Department to cover the cost of processing and handling the delinquent claim. In addition, a penalty charge will be applied with respect to any principal amount of a debt that is more than 90 days past due. Where appropriate, other steps permitted by federal debt collection statutes, including disclosure to consumer reporting agencies and use of collection agencies, will be utilized by the Department to encourage payment of amounts overdue.

(i) In any instance where the Department reasonably believes that a requester or a group of requesters acting in concert is attempting to break down a single FOIA request into a series of requests for the sole purpose of evading the payment of otherwise applicable fees, the Department will aggregate the requests and determine the applicable fees on the basis of the aggregation.

(j) Notwithstanding any other provision of this subpart, when the total amount of fees that could be charged for a particular request (or aggregation of requests) under Subpart F, after taking into account all services which must be provided at no charge or at a reduced charge, is less than \$10.00 the Department will not make any charge for fees.

§ 7.95 Fee schedule.

(a) The standard fee for a manual search to locate a record requested under Subpart F of this part, including making it available for inspection, will be determined by multiplying each searcher's hourly rate plus 16 percent by the time spent conducting the search.

(b) The standard fee for a computer search for a record requested under Subpart F of this part is the actual cost. This includes the cost of operating the central processing unit (CPU) for the time directly attributable to searching for records responsive to a FOIA request and the operator/programmer salary (hourly rate plus 16 percent) costs apportionable to the search.

(c) The standard fee for review of records requested under Subpart F of this part is the reviewer's hourly rate

plus 16 percent multiplied by the time he or she spent determining whether the requested records are exempt from mandatory disclosure.

(d) The standard fee for duplication of a record requested under Subpart F of this part is determined as follows:

(1) Per copy of each page (not larger than 8½ × 14 inches) reproduced by photocopy or similar methods (includes costs of personnel and equipment), \$0.10.

(2) Per copy prepared by computer, such as tapes or printout. Actual costs, including operator time.

(3) Per copy prepared by any other method of duplication. Actual direct cost of production.

(e) Depending upon the category of requester, and the use for which the records are requested, in some cases the fees computed in accordance with the above standard fee schedule must either be reduced or not charged, as prescribed by other provisions of this subpart.

(f) The following special services not required by the FOIA may be made available upon request, at the stated fees:

Certified copies of documents, with Department of Transportation or operating element seal (where authorized), \$4.00, or true copy, without seal, \$2.00.

§ 7.97 Services performed without charge or at a reduced charge.

(a) No fee is to be charged to any requester making a request under Subpart F for the first two hours of search time unless the records are requested for commercial use. For purposes of this subpart, when a computer search is required two hours of search time will be considered spent when the hourly costs of operating the central processing unit used to perform the search added to the computer operator's salary cost (hourly rate plus 16 per cent) equals two hours of the computer operator's salary costs (hourly rate plus 16 percent).

(b) No fee is to be charged for any time spent searching for a record requested under Subpart F if the records are not for commercial use and the requester is a representative of the news media, an educational institution whose purpose is scholarly research, or a non-commercial scientific institution whose purpose is scientific research.

(c) No fee is to be charged for duplication of the first 100 pages (standard paper, not larger than 8½ × 14 inches) of records provided to any requester in response to a request under Subpart F unless the records are requested for commercial use.

(d) No fee is to be charged to any requester for review of a record requested under Subpart F to determine whether it is exempt from disclosure unless the records are requested for commercial use. A review charge may not be charged except with respect to an initial review to determine the applicability of a particular exemption to a particular record or portion of a record. A review charge may not be assessed for review at the administrative appeal level. When records or portions of records withheld in full under an exemption which is subsequently determined not to apply are reviewed again to determine the applicability of other exemptions not previously considered, this is considered an initial review for purposes of assessing a review charge.

(e) Documents will be furnished without charge or at a reduced charge if the Assistant Secretary for Public Affairs, or his or her designee, or official(s) having initial denial authority, as the case may be, determine that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(f) Factors to be considered by officials of the Department authorized to determine whether a waiver or reduction of fees will be granted include:

(1) Whether the subject matter of the requested records concerns the operations or activities of the Federal government;

(2) Whether the disclosure is likely to contribute to an understanding of Federal government operations or activities;

(3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons;

(4) Whether the contribution to public understanding of Federal government operations or activities will be significant;

(5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and

(6) Whether the magnitude of any identified commercial interest of the requester is sufficiently large in comparison with the public interest in disclosure that disclosure is primarily in the commercial interest of the requester.

§ 7.99 Transcripts.

Transcripts of hearings or oral arguments are available for inspection. Where transcripts are prepared by a nongovernmental contractor, and the contract permits the Department to handle the reproduction of further copies, Subpart I applies. Where the contract for transcription services reserves the sales privilege to the reporting service, any duplicate copies must be purchased directly from the reporting service.

§ 7.101 Copyrighted material.

Unless approval is secured from the copyright holder, the Department will not reproduce or otherwise disseminate a copy of a copyrighted work to a requester under the FOIA. However, the Department will make arrangements to enable a requester to review the copyrighted work at a Departmental facility.

§ 7.103 Alternative sources of information.

In the interest of making documents of general interest publicly available at as low a cost as possible, alternative sources shall be arranged whenever possible. In appropriate instances, material that is published and offered for sale may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; the U.S. Department of Commerce's National Technical Information Service (NTIS), Springfield, Virginia 22151; or the National Audio-Visual Center, National Archives and Records Administration, Capital Heights, MD 20743-3701.

Appendix A—Office of The Secretary

1. *General.* This appendix describes the location and hours of operation of the document inspection facility of the Office of the Secretary (OST); the kinds of records that are available for public inspection and copying at the facility; and the procedures by which members of the public may make requests for records.

2. *Document Inspection Facilities.* The document inspection facility for records of the Office of the Secretary other than those required to be filed in connection with docketed aviation economic matters is maintained by the Office of the Assistant Secretary for Public Affairs, Suite 9421 of the Headquarters Building, located at 400 Seventh Street, SW., Washington, DC 20590. This facility is open to the public from 9:00 a.m. to 5:00 p.m. ET, Monday through Friday, except legal public holidays and other special closings. The document inspection facility for documents required to be filed in connection with

docketed aviation economic matters is maintained by the Documentary Services Division, Office of the General Counsel, Suite 4107 of the Headquarters Building. This facility is open to the public from 9:00 a.m. to 5:00 p.m. ET, Monday through Friday, except legal public holidays and other special closings.

3. *Records available through the document inspection facilities.* The following records are available through the document inspection facilities:

(a) Any material issued by the Office of the Secretary and published in the **Federal Register**, including regulations.

(b) Final opinions (including concurring or dissenting opinions) and orders made in the adjudication of cases and issued by the Office of the Secretary.

(c) Any policy or interpretation issued by the Office of the Secretary, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(d) Any administrative staff manual or instruction to staff, issued by the Office of the Secretary, that affects any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public.

(e) Formal pleadings filed in connection with docketed aviation economic proceedings, including applications, complaints, motions, petitions, answers, comments and replies.

(f) *DOT Orders.* DOT orders that are issued by the Department and used primarily to promulgate internal DOT policy, instructions, and general guidance.

(g) *DOT Notices.* DOT notices that are issued by the Department and contain short-term instructions or information that is scheduled to remain in effect for fewer than 90 days or for a predetermined period of time normally not to exceed one year.

(h) *OST Orders.* OST orders that are issued by the Office of the Secretary (OST) and used primarily to promulgate internal OST policy, instructions, and general guidance.

(i) *OST Notices.* OST notices that are issued by the Office of the Secretary and contain short-term instructions or information which is expected to remain in effect for fewer than 90 days or for a

predetermined period of time normally not to exceed one year.

4. *Requests for records under Subpart F of this part.* Each person desiring to inspect an OST record, or to obtain a copy thereof, should submit a written request to the Assistant Secretary for Public Affairs, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. If it is unknown where in DOT the record(s) sought may be found, the request may be submitted to the Assistant Secretary for Public Affairs, who will ensure the appropriate processing.

5. *The official having authority to make determinations on requests.* pursuant to the Freedom of Information Act, is limited to the Assistant Secretary for Public Affairs or his or her designee.

6. *Reconsideration of determinations not to disclose records and to deny fee waivers.* Any person who has been notified that a record or part of a record that has been requested will not be disclosed or that a request for a fee waiver or reduction will not be granted, either in whole or in part, may appeal, in writing, to the General Counsel, U.S. Department of Transportation, for reconsideration of that determination. The decision of the General Counsel is administratively final.

Appendix B—United States Coast Guard

1. General.

This appendix describes the document inspection facilities of the U.S. Coast Guard, the kinds of records that are available for public inspection and copying at those facilities, and the procedures by which members of the public may make requests for identifiable records.

2. Document Inspection Facilities

The document inspection facilities are located at the offices of the Commandant and District Commanders. The address for each of these facilities is set forth below. They are open to the public Monday through Friday during the hours specified, except for legal public holidays and other special closings. The States or regions within the jurisdiction of each District are also provided.

Commandant (G-TIS), U.S. Coast Guard, Washington, DC 20593. The facility is located at Coast Guard Headquarters, Management Analysis Division, 2100 Second Street SW., Washington, DC 20593. 7:00 a.m.—3:30 p.m. ET.

Commander, First Coast Guard District, Coast Guard Building, 408 Atlantic Building, Boston, MA 02210. 8:00 a.m.—4:30 p.m. ET. (Maine, Massachusetts, Connecticut, New Hampshire, Rhode

Island, Vermont, New Jersey (northeastern), and New York (eastern).
Commander, Second Coast Guard District, 1430 Olive Street, St. Louis, MO 63103. 8:45 a.m.—5:15 p.m. CT. (Alabama (northern), Arkansas, Colorado, Illinois (parts), Indiana (parts), Iowa, Kansas, Kentucky, Minnesota (parts), Mississippi (northern), Missouri, Nebraska, North Dakota, Ohio (parts), Oklahoma, Pennsylvania (western), South Dakota, Tennessee, West Virginia, Wisconsin (western), and Wyoming)

Commander, Fifth Coast Guard District, Federal Office Building, 431 Crawford Street, Portsmouth, Virginia 23705. 8:00 a.m.—4:30 p.m. ET. (Maryland, North Carolina, Virginia, New Jersey (southwestern), Delaware, Pennsylvania (eastern), and the District of Columbia)

Commander, Seventh Coast Guard District, Federal Building, Room 1018, 51 SW. First Avenue, Miami, FL 33130. 8:00 a.m.—4:30 p.m. ET. (Florida (parts), Georgia (parts), South Carolina, and Puerto Rico)

Commander, Eighth Coast Guard District, 500 Camp Street, New Orleans, LA 70130. 7:45 a.m.—4:15 p.m. CT. (Alabama (parts), Florida (northeastern), Georgia (southeastern), Louisiana, Mississippi (parts), New Mexico, and Texas)

Commander, Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, OH 44199. 7:30 a.m.—4:00 p.m. ET. (Illinois (northeastern), Indiana (northern), Michigan, Minnesota (northern), New York (northwestern), Ohio (northern), Pennsylvania (northeastern), Wisconsin (eastern))

Commander, Eleventh Coast Guard District, 400 Ocean Gate Boulevard, Long Beach, CA 90882. 8:00 a.m.—4:30 p.m. PT. (Arizona, California, Nevada, and Utah)

Commander, Thirteenth Coast Guard District, Federal Building, Room 3590, 915 Second Avenue, Seattle, WA 98174. 7:45 a.m.—4:15 p.m. PT. (Idaho, Montana, Oregon, and Washington)

Commander, Fourteenth Coast Guard District, 300 Ala Moana Boulevard, Honolulu, HI 96850. 8:30 a.m.—3:00 p.m. Hawaii—Aleutian Standard Time. (Hawaii)

Commander, Seventeenth Coast Guard District, Federal Building, 709 West 9th Street, Post Office Box 3-5000, Juneau, AK 99802. 8:00 a.m.—4:00 p.m. Alaska Time. (Alaska)

3. Records Available at Document Inspection Facilities

(a) The following records are available at any U.S. Coast Guard document inspection facility:

(1) Final opinions and orders made in the adjudication of cases by the Commandant, U.S. Coast Guard.

(2) U.S. Coast Guard numbered publications that affect any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public.

(b) Opinions and orders of administrative law judges are available at the document inspection facility of the Office of the Commandant and the district in which the administrative law judge is located.

(c) Policies and interpretations issued within the U.S. Coast Guard (including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation) are available at the document inspection facility of the Office of the Commandant.

(d) An index of the records located at each facility is maintained at that facility.

(e) The records and the index may be inspected at the facility, without charge. Copies of records may be obtained upon payment of the fee prescribed in Subpart I of this part.

4. Requests for Records Under Subpart F of this Part

Each person desiring to inspect a record, or obtain a copy thereof, should submit the request in writing to the U.S. Coast Guard office at which such record is located. The addresses of the Commandant and District Commanders are listed in section 2 of this Appendix. If the office at which the record is located is unknown, the request may be submitted to the Office of the Commandant at the address listed in section 2 of this Appendix. The following gives illustrations of types of records and specifies where requests for such records are appropriately addressed:

(a) Examples of records for which requests may properly be made to either the Office of the Commandant, U.S. Coast Guard or office of the appropriate District Commander include the following:

(1) Marine Casualty investigative records.

(2) Records of certificates and licenses issued.

(3) Merchant vessel inspection records.

(4) Records of merchant vessel documentation and recording of sales and other dispositions.

(5) Records of U.S. Coast Guard property and contracts.

(b) Examples of records for which requests may properly be made only to the Office of the Commandant, U.S. Coast Guard, include the following:

(1) Central files of merchant seamen.

(2) Merchant vessel shipping articles.

(3) Merchant vessel equipment approvals.

(4) Merchant Marine Council proceedings.

(5) Great Lakes pilotage records.

(6) Central files of U.S. Coast Guard personnel.

(7) U.S. Coast Guard courts-martial records.

(8) U.S. Coast Guard vessel and shore station log books more than one year old on January 1 of the year in which the request is made.

(c) Examples of records for which requests may properly be made only to the appropriate District Commander include the following:

(1) Navigation and vessel inspection penalty action records.

(2) Search and rescue reports.

(3) Coast Guard vessel and shore station log books for the current calendar year and the calendar year immediately preceding the current year.

(4) Port safety and waterfront facility records.

(5) Aids to navigation records.

(6) Merchant vessel logbooks.

(7) Shipyard and factory inspection records.

5. Officials Having Initial Authority to Deny Requests.

The following officials have authority to make initial determinations to deny requests for records:

(a) Field commanders.

(1) Commander, Atlantic Area.

(2) Commander, Pacific Area.

(3) Commander, First Coast Guard District.

(4) Commander, Second Coast Guard District.

(5) Commander, Fifth Coast Guard District.

(6) Commander, Seventh Coast Guard District.

(7) Commander, Eighth Coast Guard District.

(8) Commander, Ninth Coast Guard District.

(9) Commander, Eleventh Coast Guard District.

(10) Commander, Thirteenth Coast Guard District.

(11) Commander, Fourteenth Coast Guard District.

(12) Commander, Seventeenth Coast Guard District.

(13) Commander, Maintenance and Logistics Command Atlantic.

(14) Commander, Maintenance and Logistics Command Pacific.

(15) Superintendent, U.S. Coast Guard Academy.

(16) Commanding Officer, Coast Guard Yard.

(17) Commanding Officer, Coast Guard Training Center Cape May.

(18) Commanding Officer, Coast Guard Reserve Training Center.

(19) Commanding Officer, Coast Guard Pay and Personnel Center.

(b) Headquarters officials concerning records within their office.

(1) Chief, Plans and Evaluation Division (for records located within the office of the Commandant, Chief of Staff, special staff divisions or when a request involves records located in two or more offices).

(2) Chief, Office of Acquisition.

(3) Chief, Office of Boating, Public and Consumer Affairs.

(4) Chief, Office of Comptroller.

(5) Chief, Office of Civil Rights.

(6) Chief, Office of Health Services.

(7) Chief, General Law Division (for records in the office of the Chief Counsel).

(8) Chief, Office of Marine Safety, Security and Environmental Protection.

(9) Chief, Office of Navigation.

(10) Chief, Office of Operations.

(11) Chief, Office of Personnel.

(12) Chief, Office of Readiness and Reserve.

(13) Chief, Office of Command, Control and Communications.

6. Reconsideration of Determinations Not to Disclose Records and to Deny Fee Waivers.

Any person who has been notified that a record or part of a record that has been requested will not be disclosed, or that a request for the waiver or reduction of a processing fee has been denied, may apply, in writing, to the Commandant (G-TIS), U.S. Coast Guard, for reconsideration of that determination. The decision of the Commandant or his or her designee is administratively final.

Appendix C—Federal Aviation Administration

1. General

This appendix describes the document inspection facilities of the Federal Aviation Administration (FAA), the kinds of records that are available for public inspection and copying at those facilities, and the procedures by which members of the public may make requests for identifiable records.

2. Document Inspection Facilities

Document inspection facilities are maintained at FAA Headquarters, each FAA regional office, the Aeronautical Center, and the FAA Technical Center. The document inspection facility for the European Office is located at FAA Headquarters. Except for legal public

holidays and other special closings, these facilities are open to the public, Monday through Friday, during local times specified in the following listings. The States within the jurisdictional area of each FAA Regional Office are also listed in parentheses.

FAA Headquarters, 800 Independence Avenue, SW., Washington, DC 20591. 8:30 a.m.—5:00 p.m. ET.

Alaska Region, 701 C Street, Box 14, Anchorage, AK 99513. 7:30 a.m.—4:00 p.m. Alaska Time (Alaska)

Central Region, 601 East 12th Street, Kansas City, Missouri 64106. 7:30 a.m.—4:00 p.m. CT. (Iowa, Kansas, Missouri, and Nebraska)

Eastern Region, Fitzgerald Federal Bldg., JFK International Airport, Jamaica, NY 11430. 8:00 a.m.—4:30 p.m. ET. (District of Columbia, Delaware, Maryland, New Jersey, New York, Pennsylvania, Virginia, and West Virginia)

Great Lakes Region, O'Hare Lake Office Center, 2300 East Devon Street, Des Plaines, Ill. 60018. 7:30—4:00 p.m. CT. (Illinois, Indiana, Michigan, Minnesota, North Dakota, Ohio, South Dakota, and Wisconsin)

New England Region, 12 New England Executive Park, Burlington, MA (Mailing Address: Post Office Box 510, Burlington, MA 01803). 8:00 a.m.—4:00 p.m. ET. (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont)

Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle WA 98168. 7:30 a.m.—4:00 p.m. PT. (Colorado, Idaho, Montana, Oregon, Utah, Washington, and Wyoming)

Southern Region, 3400 Norman Berry Drive, East Point, GA (Mailing Address: Post Office Box 20636, Atlanta, GA 30320). 8:00 a.m.—4:30 p.m. ET. (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and Virgin Islands)

Southwest Region, 4400 Blue Mound Road, Fort Worth, TX (Mailing Address: Fort Worth, TX 76193-0041). 8:00 a.m.—4:30 p.m. CT. (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas)

Western Pacific Region, 15000 Aviation Boulevard, Hawthorne, CA (Mailing Address: Post Office Box 92007, World-Way Postal Center, Los Angeles, CA 90009). 7:30 a.m.—4:00 p.m. PT. (Arizona, California, Hawaii, and Nevada)

Mike Monroney Aeronautical Center, 6500 South MacArthur Boulevard (Mailing Address: Post Office Box 25082), Oklahoma City, OK 73125. 8:00 a.m.—4:30 p.m. CT.

FAA Technical Center, Atlantic City Airport, Atlantic City, NJ 08405. 8:00 a.m.—4:30 p.m. ET.

3. Records Available at Document Inspection Facilities

(a) The following records under Subpart E of this part are available at FAA document inspection facilities:

(1) Final opinions and orders made in the adjudication of cases by the

Administrator, FAA, or his/her designee.

(2) Policies and interpretations, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation. All such policies and interpretations made by the Administrator, Deputy Administrator, Associate Administrators, directors, and heads of offices are available at the FAA Headquarters document inspection facility; only those policies and interpretations made by the Administrator, Deputy Administrator, and the regional or center director concerned are available at regional and center document inspection facilities.

(3) Any administrative staff manual or instruction to staff that affects any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public. Such documents are available at the inspection facility of the organizational unit which has issued them.

(b) An index of the records located at each document inspection facility is maintained at that facility.

(c) The records and the index may be inspected, without charge, at the facility. Copies of records may be obtained upon payment of the fee prescribed in Subpart I of this part.

4. Requests for Reasonably Described Records Under Subpart F of this part

Each person desiring to inspect a record, or to obtain a copy thereof, should submit a request in writing to the Assistant Administrator for Public Affairs, FAA Headquarters, or the director of the region or center in which it is located. The addresses of FAA Headquarters and the Regions and Centers are listed in paragraph 2 of this Appendix. If the location of the record is not known, the request may be submitted to the Assistant Administrator for Public Affairs, FAA Headquarters. The following list gives illustrations of types of records and where they might be located:

(a) Records pertaining to the issue, amendment, suspension or revocation of certificates, permits, authorizations, and approvals, such as:

(1) Airman certificates and ratings for pilots, flight instructors, flight navigators, flight engineers, aircraft dispatchers, mechanics, repairmen, air traffic control operators, and parachute

riggers and ground instructor certificates are maintained at the Mike Monroney Aeronautical Center.

(2) Aircraft registration certificates and airworthiness certificates are maintained at the Aeronautical Center.

(3) Aircraft type certificates and production certificates are maintained at the regional office within which the issuance was made.

(4) Ferry permits and special flight authorizations are maintained at the district office of the region within which the issuance was made.

(5) Air carrier operating certificates, commercial operator certificates, agricultural aircraft operator certificates, repair station certificates, parachute loft certificates, pilot school certificates, and mechanic school certificates are maintained at the district office of the region within which the certification was taken.

(b) Records of designations of representatives of the Administrator are located at FAA Headquarters.

(c) Records relating to Federal-aid airport grants are located at the regional office within which the grant was made.

(d) Records of approvals of navigational facilities under Federal Aviation Regulations (FAR) Part 171 are located at the regional office within which the approval was issued.

(e) Records relating to civil penalty actions and seizure of aircraft are located at the regional office within which the action was taken.

5. Reconsideration of Determinations Not to Disclose Records and to Deny Fee Waivers

Any person who has been notified that a record or part of a record that has been requested will not be disclosed or that a request for a fee waiver or reduction will not be granted, either in whole or in part, may appeal, in writing to the Assistant Administrator for Public Affairs, FAA, for reconsideration of that determination. The decision of the Assistant Administrator for Public Affairs is administratively final.

Appendix D—Federal Highway Administration

1. General

This appendix describes the location and hours of operation of the document inspection facilities of the Federal Highway Administration (FHWA); the kinds of records that are available for public inspection and copying at these facilities; and the procedures by which members of the public may make requests for records.

2. Document Inspection Facilities

Document inspection facilities are maintained at the Federal Highway Administration Headquarters, each regional office, and each division office. Except for legal public holidays and other special closings, these facilities are open to the public, Monday through Friday, during regular working hours, which are included parenthetically after each address below. Written requests for information should be sent to the appropriate office and the envelope in which the request is sent should be prominently marked with the letters "FOIA."

Washington Headquarters

FOIA Program Officer (HMS-10), Federal Highway Administration, 400 Seventh Street, SW., Room 4428, Washington, DC 20590. 7:45 a.m.-4:15 p.m. ET.

Regional Offices

Regional Federal Highway Administrator, Region 1, Federal Highway Administration, Clinton Avenue and North Pearl Street, Room 719, Albany, NY 12207. 7:30 a.m.-4:00 p.m. ET. (New York, New Jersey, Connecticut, Massachusetts, Rhode Island, Vermont, New Hampshire, Maine, Puerto Rico, Virgin Islands)

Regional Federal Highway Administrator, Region 3, Federal Highway Administration, 31 Hopkins Plaza, Room 1633, Baltimore, MD 21201. 7:45 a.m.-4:15 p.m. ET. (Maryland, Virginia, Delaware, District of Columbia, Pennsylvania, West Virginia)

Regional Federal Highway Administrator, Region 4, Federal Highway Administration, 1720 Peachtree Road, NW., Suite 200, Atlanta, GA 30367. 7:45 a.m.-4:15 p.m. ET. (Georgia, Florida, Alabama, Mississippi, Tennessee, Kentucky, North Carolina, South Carolina)

Regional Federal Highway Administrator, Region 5, Federal Highway Administration, 18209 Dixie Highway, Homewood, IL 60430-2294. 7:30 a.m.-4:15 p.m. CT. (Illinois, Indiana, Ohio, Michigan, Wisconsin, Minnesota)

Regional Federal Highway Administrator, Region 6, Federal Highway Administration, 819 Taylor Street, Fort Worth, TX 76102. 8:00 a.m.-4:30 p.m. CT. (Texas, Louisiana, Arkansas, Oklahoma, New Mexico)

Regional Federal Highway Administrator, Region 7, Federal Highway Administration, 6301 Rockhill Road, P.O. Box 419715, Kansas City, MO 64141. 7:45 a.m.-4:15 p.m. CT. (Missouri, Iowa, Kansas, Nebraska)

Regional Federal Highway Administrator, Region 8, Federal Highway Administration, 555 Zang Street, Room 400, Lakewood, CO 80228. 7:45 a.m.-4:15 p.m. MT. (Colorado, Utah, Wyoming, Montana, North Dakota, South Dakota)

Regional Federal Highway Administrator, Region 9, Federal Highway Administration, 211 Main Street, Room 1100, San Francisco, CA 94105. 7:45 a.m.-4:15 p.m. PT. (California, Arizona, Nevada, Hawaii, American Samoa, Guam)

Regional Federal Highway Administrator,
Region 10, Federal Highway
Administration, Mohawk Building, Room
312, 708 SW Third Avenue, Portland, OR
97204. 7:00 a.m.-5:00 p.m. PT. (Oregon,
Idaho, Washington, Alaska)

Division Offices

Alabama, 441 High Street, Montgomery, AL
36104-4684. 7:45 a.m.-4:30 p.m. CT.
Alaska, Federal Building, 709 West Ninth
Street, Room 851, P.O. Box 21648, Juneau,
AK 99802-1648. 7:30 a.m.-5:00 p.m. Alaska
Time.
Arizona, 234 North Central Avenue, Suite 330,
Phoenix, AZ 85004. 7:30 a.m.-4:15 p.m. MT.
Arkansas, Room 3128, Federal Office
Building, 700 West Capitol Avenue, Little
Rock, AR 72201-3298. 7:45 a.m.-4:15 p.m.
CT.
California, Federal Building, Second Floor,
801 I Street, Sacramento, CA 95814. 7:45
a.m.-4:30 p.m. PT.
Colorado, 555 Zang Street, Room 250,
Lakewood, CO 80228. 7:45 a.m.-4:15 p.m.
MT.
Connecticut, Abraham A. Ribicoff Federal
Building, 450 Main Street, Room 635,
Hartford, CT 06103. 7:30 a.m.-4:00 p.m. ET.
Delaware, Federal Office Building, Room
2101, 300 South New Street, Dover, DE
19901-6726. 7:45 a.m.-4:15 p.m. ET.
District of Columbia, Nassif Building, Room
6320, 400 Seventh Street, SW., Washington,
DC 20590. 7:30 a.m.-4:00 p.m. ET.
Florida, 227 North Bronough Street, Room
2015, Tallahassee, FL 32301. 7:30 a.m.-4:00
p.m. ET.
Georgia, Suite 300, 1720 Peachtree Road,
NW., Atlanta, GA 30367. 7:00 a.m.-4:00 p.m.
ET.
Hawaii, Prince Jonah Kuhio Kalaniana'ole
Federal Building, 300 Ala Moana
Boulevard, Room 3202, Honolulu, HI 96850.
(Duty Hours) 7:30 a.m.-4:00 p.m. HST.
Idaho, 3010 W. State Street, Boise, ID 83703.
7:30 a.m.-4:30 p.m. MT.
Illinois, 320 West Washington Street, Room
700, Springfield, IL 62701. 7:30 a.m.-4:15
p.m. CT.
Indiana, 575 N. Pennsylvania Street, Room
254, Indianapolis, IN 46204. 7:30 a.m.-4:00
p.m. Eastern Standard Time.
Iowa, 105 Sixth Street, Ames, IA 50010. 7:45
a.m.-4:30 p.m. CT. Mailing address: P.O.
Box 627.
Kansas, 444 SE Quincy Street, Room 240,
Topeka, KA 66683. 7:45 a.m.-4:15 p.m. CT.
Kentucky, John C. Watts Federal Building and
U.S. Courthouse, 330 West Broadway,
Frankfort, KY 40602. 8:00 a.m.-4:45 p.m. ET.
Mailing address: P.O. Box 536.
Louisiana, Federal Building, Room 239, 750
Florida Street, Baton Rouge, LA 70801. 7:30
a.m.-4:00 p.m. CT. Mailing address: P.O.
Box 3929, Baton Rouge, LA 70821.
Maine, Edmund S. Muskie Federal Building,
U.S. Post Office, Room 614, 40 Western

Avenue, Augusta, ME 04330. 7:30 a.m.-4:00
p.m. ET.
Maryland, The Rotunda, Suite 220, 711 West
40th Street, Baltimore, MD 21211. 7:45 a.m.-
4:15 p.m. ET.
Massachusetts, Transportation Systems
Center, 55 Broadway, 10th Floor,
Cambridge, MA 02142. 7:45 a.m.-4:15 p.m.
ET.
Michigan, Federal Building, 315 West Allegan
Street, P.O. Box 10147, Room 211, Lansing,
MI 48901. 8:00 a.m.-4:45 p.m. ET.
Minnesota, Metro Square Building, Suite 490,
Seventh & Robert Streets, St. Paul, MN
55101. 7:30 a.m.-4:00 p.m. CT.
Mississippi, 666 North Street, Suite 105,
Jackson, MS 39202-3199. 7:45 a.m.-4:15 p.m.
CT.
Missouri, 209 Adams Street, Jefferson City,
MO 65102. 7:45 a.m.-4:15 p.m. CT. Mailing
address: P.O. Box 1787.
Montana, Federal Office Building, 301 South
Park, Drawer 10056, Helena, MT 59626-
0056. 7:30 a.m.-4:00 p.m. MT.
Nebraska, Federal Building, Room 487, 100
Centennial Mall North, Lincoln, NE 68508-
3851. 7:45 a.m.-4:15 p.m. CT.
Nevada, 1535 Hot Springs Road, Suite 100,
Carson City, NV 89701-0602. 7:45 a.m.-4:30
p.m. PT.
New Hampshire, Federal Building, 55
Pleasant Street, Room 219, Concord, NH
03301. 7:30 a.m.-4:00 p.m. EST.
New Jersey, Suburban Square Building, 25
Scotch Road, Second Floor, Trenton, NJ
08628-2595. 8:00 a.m.-4:30 p.m. ET.
New Mexico, 117 U.S. Court House, Post
Office Box 1088, Santa Fe, NM 87504. 7:30
a.m.-4:00 p.m. MT.
New York, Leo W. O'Brien Federal Building,
Ninth Floor, Clinton Avenue and North
Pearl Street, Albany, NY 12207. 7:30 a.m.-
4:00 p.m. ET.
North Carolina, 310 New Bern Avenue, P.O.
Box 26806, Raleigh, NC 27611. 7:45 a.m.-4:15
p.m. ET.
North Dakota, Federal Building, P.O. Box
1755, Bismarck, ND 58502. 7:45 a.m.-4:30
p.m. CT.
Ohio, 200 North High Street, Room 328,
Columbus, OH 43215. 7:30 a.m.-4:15 p.m. ET.
Oklahoma, Federal Office Building, Room
454, 200 N.W. Fifth Street, Oklahoma City,
OK 73102. 8:00 a.m.-4:30 p.m. CT.
Oregon, The Equitable Center, Suite 100, 530
Center Street, NE., Salem, OR 97301. 7:45
a.m.-4:30 p.m. PT.
Pennsylvania, 228 Walnut Street, Harrisburg,
PA 17108. 8:00 a.m.-4:30 p.m. ET. Mailing
address: P.O. Box 1086.
Puerto Rico, Office Number 150, U.S.
Courthouse and Federal Building, Carlos
Chardon Street, Hato Rey, PR 00918. 7:30
a.m.-4:00 p.m. Atlantic Standard Time.
Rhode Island, 380 Westminster Mall, Fifth
Floor, Providence, RI 02903. 7:45 a.m.-4:15
p.m. ET.
South Carolina, Strom Thurmond Federal

Building, 1835 Assembly Street, Suite 758,
Columbia, SC 29201. 7:45 a.m.-4:15 p.m. ET.
South Dakota, P.O. Box 700, Federal Office
Building, Pierre, SD 57501. 8:00 a.m.-4:30
p.m. CT.
Tennessee, Federal Building, U.S.
Courthouse, 801 Broadway, Room A-926,
Nashville, TN 37203. 8:00 a.m.-4:30 p.m. CT.
Texas, Room 826, Federal Office Building, 300
East Eighth Street, Austin, TX 78701. 7:30
a.m.-4:15 p.m. CT.
Utah, Federal Building, 125 South State
Street, Salt Lake City, UT 84111. 7:45 a.m.-
4:30 p.m. MT.
Vermont, Federal Building, Montpelier, VT
05602. 7:30 a.m.-4:30 p.m. ET. Mailing
address: P.O. Box 568.
Virginia, Federal Building, Tenth Floor, 400
North Eighth Street, Richmond, VA 23240.
7:45 a.m.-4:15 p.m. ET.
Virgin Islands, U.S. Federal Building and
Courthouse, Room 281, Charlotte Amalie,
St. Thomas, Virgin Islands 00801. Time:
8:30-12:30 AST.
Washington, Evergreen Plaza, 711 South
Capitol Way, Suite 501, Olympia, WA
98501. 7:30 a.m.-4:30 p.m. PT.
West Virginia, 550 Eagan Street, Suite 300,
Charleston, WV 25301. 8:00 a.m.-4:30 p.m.
ET.
Wisconsin, 4502 Vernon Boulevard, Madison,
WI 53705-4905. 7:30 a.m.-4:15 p.m. CT.
Wyoming, 916 Evans Avenue, P.O. Box 1127,
Cheyenne, WY 82003. 7:45 a.m.-4:30 p.m.
MT.

Direct Federal Divisions

Division Engineer, Eastern Direct Federal
Division, 1000 North Glebe Road,
Arlington, VA 22201. 7:45 a.m.-4:15 p.m.
ET.
Division Engineer, Central Federal Division,
P.O. Box 25246, Denver, CO 80225. 7:45
a.m.-4:15 p.m. MT.
Division Engineer, Western Direct Federal
Division, 610 East Fifth Street, Vancouver,
WA 98661. 8:00 a.m.-4:30 p.m. PT.

3. Records Available Through Document Inspection Facilities.

(a) The following records are
available through the FHWA
Headquarters document inspection
facility:

(1) Final opinions (including
concurring and dissenting opinions, if
any) and orders made in the
adjudication of cases and issued by the
Federal Highway Administration;

(2) Any policy or interpretation issued
by the Federal Highway Administration,
including any policy or interpretation
concerning a particular factual situation,
if that policy or interpretation can

reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(b) The following records are available through all Federal Highway Administration document inspection facilities:

(1) *FHWA Orders*. These orders are issued by the Federal Highway Administration and used primarily to promulgate internal policy, instructions, and general guidance.

(2) *FHWA Notices*. These notices are issued by the Federal Highway Administration and contain short term instructions or information which is expected to remain in effect for a predetermined period of time normally not to exceed one year.

(3) *FHWA Bulletins*. These bulletins are issued by the Federal Highway Administration and are used to promulgate one time announcements or transmit reports, publications, and other similar material.

(4) *FHWA/NHTSA Orders*. These are orders issued jointly by the Federal Highway Administration and the National Highway Traffic Safety Administration and contain policies, procedures, and information pertaining to the joint administration of the State and Community Highway Safety Programs.

(5) *Technical Advisories*. These contain permanent or long-lasting detailed techniques or technical material that is advisory in nature.

(6) *FHWA Manuals*. These manuals are issued by the Federal Highway Administration and contain detailed procedures relating to policies and program responsibilities. They include the following:

(i) Federal-Aid Highway Program Manual. This Manual contains policies, procedures, standards, and guides relating to the administration of the Federal Aid Highway Program and the Direct Federal Construction Program.

(ii) Labor Compliance Manual.

(iii) Civil Rights-Equal Opportunity Manual.

(iv) Highway Planning Program Manual.

(v) Motor Carrier Safety Manual.

(vi) Highway Safety Program Manual.

(vii) Manual on Uniform Traffic Control Devices.

(viii) Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects FP-85, 1985.

(ix) FP-79 Construction Manual.

(x) Emergency Relief Disaster Assistance Manual.

These Manuals contain details of compliance programs, accident

investigations, enforcement programs, and interpretations.

(7) *Highway Safety Standards*. These highway related standards, issued by the Federal Highway Administration, apply to the aspect of State highway safety programs for which responsibility resides in the Federal Highway Administration under the Highway Safety Act of 1966 and delegations of authority by the Secretary of Transportation.

(8) Motor Carrier Safety Administrative Rulings.

(9) Motor Carrier Safety Waivers From Regulations (including Handicapped Driver Waiver Program).

(10) Indices for the above records.

4. Requests for Records Under Subpart F of this Part

Each person desiring to inspect a record, or to obtain a copy thereof, should submit a request, in writing to the appropriate Federal Highway Administration official at the address listed in paragraph 2 above. If it is unknown where in FHWA the record(s) sought may be found, the request may be submitted to the FOIA Program Officer, at the address given in paragraph 2 above. Each request is subject to the appropriate fee prescribed in Subpart I of this part.

5. Determinations Not To Disclose Records

The FOIA Program Officer in Washington Headquarters is the only official authorized to deny requests for the disclosure of records for any Federal Highway Administration element, both headquarters and field.

6. Reconsideration of Determinations Not To Disclose Records and To Deny Fee Waivers

Any person who has been notified that a record or part of a record that has been requested will not be disclosed, or that a request for a fee waiver or reduction will not be granted, may appeal, in writing, to the Associate Administrator for Administration, Federal Highway Administration, 400 Seventh Street SW., Washington, DC, 20590, for reconsideration of the determination. The decision of the Associate Administrator for Administration is administratively final.

Appendix E—Federal Railroad Administration

1. General.

This appendix describes the document inspection facility of the Federal Railroad Administration, the kinds of records that are available for public inspection and copying at that facility,

and the procedures by which members of the public may make requests for identifiable records.

2. Document Inspection Facility

The document inspection facility is maintained by the Executive Director of the Federal Railroad Administration, Room 8212, 400 Seventh Street, SW., Washington, DC 20590. This facility is open to the public 8:30 a.m. to 5:00 p.m., ET, Monday through Friday, except for legal public holidays and other special closings.

3. Records Available at the Document Inspection Facility

The following records are maintained at the document inspection facility:

(a) Any material issued by the Federal Railroad Administration and published in the *Federal Register*, including regulations.

(b) Final opinions (including concurring and dissenting opinions, if any) and orders made in the adjudication of cases and issued by the Federal Railroad Administration. Included are opinions and orders issued under the Safety Appliance Act, Hours of Service Act, Locomotive Inspection Act, Accident Reports Act, and the Federal Railroad Safety Act of 1970.

(c) Any policy or interpretation issued within the Federal Railroad Administration, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(d) Subject to § 7.41(a)(3) of this part, any administrative staff manual or instruction to staff, issued by the Federal Railroad Administration, that affects any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public.

(e) Public notice of pending administrative actions.

(f) Office of Safety Annual Report.

(g) Accident/Incident Bulletin.

(h) Rail-Highway Grade-Crossing Bulletin.

(i) Summary of accidents investigated by the Federal Railroad Administration.

(j) Certain railroad employee fatalities investigated by the Federal Railroad Administration.

(k) Subject to § 7.69 of this part, documents related to loans, loan guarantees, or grant programs

conducted by the Federal Railroad Administration.

(l) An index to the material described in (a) through (d). The records and the index may be inspected at the facility without charge. Copies of records may be obtained upon payment of fees prescribed in Subpart I of this part.

4. Requests for Identifiable Records Under Subpart F of this Part

Each person desiring to inspect a record, or to obtain a copy thereof, should submit a request in writing to the Executive Director, Federal Railroad Administration, Room 8212, 400 Seventh Street, SW., Washington, DC 20590. Each request should be accompanied by a signed authorization to conduct the search and agreement to pay any costs incurred. Requester will be notified when it is estimated that the fee will likely exceed \$25. Prepayment may be required before delivery is made.

5. Reconsideration of Department Not To Disclose Records and To Deny Fee Waivers.

Any person who has been notified that a record or part of a record that has been requested will not be disclosed or that a request for a fee waiver or reduction will not be granted, either in whole or in part, may appeal, in writing, to the Federal Railroad Administrator, 400 Seventh Street, SW., Washington, DC 20590 for reconsideration of that determination. The decision of the Federal Railroad Administrator is administratively final.

Appendix F—National Highway Traffic Safety Administration

1. *General.* This appendix describes the document inspection facilities of the National Highway Traffic Safety Administration (NHTSA), the kinds of records that are available for inspection and copying at these facilities, and the procedures by which members of the public may make requests for identifiable records.

2. *Document inspection facilities.* Document inspection facilities are maintained for NHTSA Headquarters and each NHTSA regional office. Unless otherwise noted, these facilities, which are located at the following addresses, are open to the public from 7:45 a.m. to 4:15 p.m. local time, Monday through Friday, except legal public holidays and other special closings.

Washington Headquarters

National Highway Traffic Safety Administration, Technical Reference Division, Room 5108, 400 Seventh Street, SW., Washington, DC 20590. Hours of operation are 8:00 a.m. to 4:00 p.m. ET.

National Highway Traffic Safety Administration, Technical Reference Division, Docket Section Room 5109, 400 Seventh Street, SW., Washington, DC 20590. (Material covered by paragraph 3(a)(8) of this Appendix only). Hours of operation are 8:00 a.m. to 4:00 p.m. ET.

National Highway Traffic Safety Administration, Office of Management and Data Systems (OMDS), Room 5238, 400 Seventh Street, SW., Washington, DC 20590. (Material covered by paragraphs 3(a)(9) and (10) of this Appendix only). Hours of operation are 8:00 a.m. to 4:00 p.m. ET.

Regional Offices

Region I—Regional Administrator, NHTSA, Transportation Systems Center, Kendall Square, Code 903, Cambridge, MA 02142. (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont)

Region II—Regional Administrator, NHTSA, 222 Mamaroneck Avenue, Suite 204, White Plains, New York 10605. (New York, New Jersey, Puerto Rico, and Virgin Islands)

Region III—Regional Administrator, NHTSA, Airport Plaza Building, 793 Elkridge Landing Road, Room D-203, Linthicum, MD 21090. Hours of operation are 8:00 a.m. to 4:30 p.m. ET. (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia)

Region IV—Regional Administrator, NHTSA, Suite 501, 1720 Peachtree Road, NW., Atlanta, GA 30309. (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee)

Region V—Regional Administrator, NHTSA, 18209 Dixie Highway, Homewood, IL 60430. Hours of operation are 8:00 a.m. to 4:30 p.m. CT. (Illinois, Indiana, Michigan, Ohio, Minnesota, and Wisconsin)

Region VI—Regional Administrator, NHTSA, Room 8A38, 819 Taylor Street, Fort Worth, TX 76102. Hours of operation are 8:00 a.m. to 4:30 p.m. CT. (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas)

Region VII—Regional Administrator, NHTSA, P.O. Box 412515, Kansas City, MO 64141. (Iowa, Kansas, Missouri, and Nebraska)

Region VIII—Regional Administrator, NHTSA, 555 Zang Street, Fourth Floor, Denver, CO 80228. (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming)

Region IX—Regional Administrator, NHTSA, 211 Main Street, Suite 1000, San Francisco, CA 94105. (American Samoa, Arizona, California, Guam, Hawaii, and Nevada)

Region X—Regional Administrator, NHTSA, 3140 Jackson Federal Building, Seattle, Washington 98174. Hours of operation are 8:00 a.m. to 4:30 p.m. PT. (Alaska, Idaho, Oregon, and Washington)

3. Records Available at Document Inspection Facilities

(a) Certain documents not in the custody of the document inspection facility (for example, current defect investigations) may be reviewed there, but only if they are requested in advance. The following records are

available at the NHTSA Headquarters document inspection facility:

- (1) Final opinions and orders made in the adjudication of cases and issued by the National Highway Traffic Safety Administration.
- (2) NHTSA test reports that assess manufacturer's compliance with Federal Motor Vehicle Safety Standards.
- (3) Investigative reports concerning compliance with standards and possible safety-related defects.
- (4) Summaries and detailed reports of motor vehicle recall campaigns.
- (5) Consumers' complaint letters regarding motor vehicles.
- (6) Contractors' technical reports documenting the results of research performed for NHTSA pursuant to contract.
- (7) Multidisciplinary case studies on the causes of selected motor vehicle accidents.
- (8) Rulemaking actions including comments and informal interpretations and opinions concerning provisions of the National Traffic and Motor Vehicle Safety Act of 1966, the Motor Vehicle Information and Cost Savings Act and the Highway Safety Act and regulations and standards issued thereunder which have been given to members of the public by National Highway Traffic Safety Administration officials.
- (9) *NHTSA Orders.* These orders are issued by the National Highway Traffic Safety Administration and contain policy, instructions, and general procedures.
- (10) *NHTSA Notices.* These notices are issued by the National Highway Traffic Safety Administration and transmit one-time or short-term announcements or temporary directives (1 year or less).
- (b) The following records are available at all NHTSA document inspection facilities:
 - (1) *Motor Vehicle Safety Standards.* These standards, issued by the National Highway Traffic Safety Administration, apply to new motor vehicles and equipment thereon.
 - (2) *Highway Safety Standards.* These standards, issued by the National Highway Traffic Safety Administration, apply to State highway safety programs.
 - (3) *State Highway Programs.* Reports on State highway programs presenting the proposed implementation of Federal Highway Standards on an annual and long-range basis. These reports are available at the NHTSA Headquarters document inspection facility and the appropriate Regional Administrator's Office.
 - (4) *Requests for records under Subpart F of this part.* Persons wishing to inspect

a record, or to obtain a copy thereof, should submit a request in writing to the NHTSA facility in which such record is located. If the records are located at Washington Headquarters, requests should be sent to Director, Executive Secretariat, NHTSA, Room 5221, 400 Seventh Street, SW., Washington, DC 20590. If the records are located in a regional office, requests should be sent to the appropriate inspection facility.

5. *Reconsideration of determinations not to disclose records and to deny fee waivers.* Any person who has been notified that a record or part of a record that has been requested will not be disclosed or that a request for a fee waiver or reduction will not be granted, either in whole or in part, may appeal in writing, to the Associate Administrator for Administration, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

6. The fee for a search for a record or records identified by class or subject is pursuant to § 7.95 of this part.

Appendix G—Urban Mass Transportation Administration

1. General

This appendix describes the document inspection facilities of the Urban Mass Transportation Administration (UMTA), the kind of records that are available for public inspection and copying at these facilities, and the procedures by which members of the public may make requests for identifiable records.

2. Document Inspection Facilities

Document inspection facilities are maintained at the Urban Mass Transportation Administration Headquarters and each UMTA regional office. Except for legal public holidays and other special closings, these facilities are open to the public, Monday through Friday, at the prescribed times and locations:

Washington Headquarters

Urban Mass Transportation Administration, Office of Public Affairs, Room 9314, 400 Seventh Street, SW., Washington, DC 20590. (Working hours—8:30 a.m.—5:00 p.m. ET).

Regional Offices

Region I—Regional Administrator, UMTA, Transportation Systems Center, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142. 8:30 a.m.—5:00 p.m. ET. (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont)

Region II—Regional Administrator, UMTA, 26 Federal Plaza, Suite 14-110, New York, NY 10278. 8:30 a.m.—5:00 p.m. ET. (New Jersey and New York)

Region III—Regional Administrator, UMTA, 841 Chestnut Street, Suite 714, Philadelphia, PA 19107. 8:00 a.m.—5:00 p.m. ET. (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia)

Region IV—Regional Administrator, UMTA, 1720 Peachtree Road, NW., Suite 400, Atlanta, GA 30309. 8:30 a.m.—5:00 p.m. ET. (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Puerto Rico)

Region V—Regional Administrator, UMTA, 300 S. Wacker Drive, Suite 1720, Chicago, IL 60606. 8:30 a.m.—5:00 p.m. CT. (Illinois, Indiana, Michigan, Ohio, and Wisconsin)

Region VI—Regional Administrator, UMTA, 819 Taylor Street, Suite 9A32, Ft. Worth, TX 76102. 8:00 a.m.—5:00 p.m. CT. (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas)

Region VII—Regional Administrator, UMTA, 6301 Rockhill Road, Suite 100, Kansas City, MO 64131. 8:30 a.m.—5:00 p.m. CT. (Iowa, Kansas, Missouri, and Nebraska)

Region VIII—Regional Administrator, UMTA, 1050 17th Street, Suite 1822 Prudential Plaza, Denver, CO 80265. 8:30 a.m.—5:00 p.m. MT. (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming)

Region IX—Regional Administrator, UMTA, 211 Main Street, Room 1160, San Francisco, CA 94105. 8:30 a.m.—5:00 p.m. PT. (Nevada, California, Arizona, Hawaii, and Guam)

Region X—Regional Administrator, UMTA, 915 Second Avenue, Suite 3142, Seattle, WA 98174. 8:00 a.m.—4:30 p.m. PT. (Alaska, Idaho, Oregon, and Washington)

3. Records Available at the Document Inspection Facilities

The following records are located at the document inspection facilities:

(a) Final opinions (including concurring or dissenting opinions) and orders made in the adjudication of cases and issued by the Office of the Secretary.

(b) Any policy or interpretation issued by the Urban Mass Transportation Administration, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(c) Any administrative staff manual or instruction to staff, issued by the Urban Mass Transportation Administration that affects any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public.

(d) An index to, and copies of, the internal and external directives of the Urban Mass Transportation Administration. The records and the index may be inspected without charge.

Copies of records may be obtained upon payment of the fee prescribed in Subpart I of this part.

(e) Any proposed or final regulation issued by the Urban Mass Transportation Administration and any docket materials regarding these regulations. Public dockets for rulemakings are kept by the Docket Clerk, Room 9223, and are available for public inspection and copying.

4. Requests for Identifiable Records Under Subpart F of This Part

Each person desiring to inspect a record or to obtain a copy thereof, should submit the request in writing to the Director of Public Affairs, Urban Mass Transportation Administration, Room 9314, Department of Transportation Building (Nassif Building), 400 Seventh Street, SW., Washington, DC 20590. Each request should be accompanied by a signed authorization to conduct the search and agreement to pay any costs incurred, as provided in 49 CFR Part 7. The requester may stipulate a maximum fee which he or she will pay. Prepayment may be required if authorized by 49 CFR Part 7.

5. Reconsideration of Determinations Not To Disclose Records and To Deny Fee Waivers

Any person who has been notified that a record or part of a record will not be disclosed or that a request or a fee waiver or reduction will not be granted, either in whole or in part, may appeal, in writing, to the Deputy Administrator, Urban Mass Transportation Administration, Room 9328, 400 Seventh Street, SW., Washington, DC 20590, for reconsideration of that determination. The decision of the Deputy Administrator is administratively final.

Appendix H—Saint Lawrence Seaway Development Corporation

1. *General.* This appendix describes the document inspection facility of the Saint Lawrence Seaway Development Corporation, the kinds of records that are available for public inspection and copying at that facility, and the procedures by which members of the public may make requests for identifiable records.

2. *Document inspection facility.* The document inspection facility of the Saint Lawrence Seaway Development Corporation is maintained at its operations headquarters building in Massena, New York. This facility is open to the public during regular working hours (8:00 a.m. to 4:30 p.m. ET).

3. *Records available at the document inspection facility.* The following

records are maintained at the document inspection facility:

(a) Final opinions (including concurring and dissenting opinions, if any) and orders made in the adjudication of cases and issued by the Saint Lawrence Seaway Development Corporation.

(b) Any policy or interpretation issued by the Saint Lawrence Seaway Development Corporation, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(c) Any Administrative staff manual or instruction to staff, issued by the Saint Lawrence Seaway Development Corporation, that affects any member of the public, including the prescribing of any standard, procedure or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public.

(d) An index to the material described in (a) through (c). The records and the index may be inspected at the facility without charge. Copies of records may be obtained upon payment of fee prescribed in Subpart I of this part.

4. *Requests for identifiable records under Subpart F of this part.* Each person desiring to inspect a record, or to obtain a copy thereof should submit a request in writing to the Comptroller, Office of Finance/Administration, Saint Lawrence Seaway Development Corporation, 180 Andrews Street, Massena, New York 13662.

5. Any person who has been notified that a record will not be disclosed; and any person who has been notified that his or her request for a fee waiver, in whole or in part, cannot be granted, may apply, in writing, to the Administrator, Saint Lawrence Seaway Development Corporation, Post Office Box 44090, Washington, DC 20026-4090, for reconsideration of the request. The decision of the Administrator is administratively final.

Appendix I—Maritime Administration

1. *General.* This appendix describes the location and hours of operation of the document inspection facility of the Maritime Administration (MARAD), the kinds of records that are available for public inspection and copying at that facility, and the procedures by which members of the public may make requests for reasonably described records.

2. *Document inspection facility.* The document inspection facility for

MARAD is maintained in Room 7300 of the Department of Transportation Building, 400 Seventh Street SW., Washington, DC 20590. The facility is open to the public between 9:30 a.m. and 4:30 p.m. eastern time, Monday through Friday, except legal public holidays and other special closings.

3. *Records available at the document inspection facility.* The following records are maintained at the document inspection facility:

(a) Any material issued by MARAD and published in the *Federal Register*, including regulations, for the most recent five years.

(b) Opinions, decisions, and orders of the Maritime Administrator/MARAD and of the Maritime Subsidy Board (including concurrences and dissents, if any).

(c) Any policy or interpretation issued by MARAD, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(d) Any administrative staff manual or instruction to staff, issued by MARAD, that affects any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public as described in Subpart E of this part.

(e) An index of the records described in (b) through (d).

4. *Requests for reasonably described records under Subpart F of this part.* Each person desiring to inspect a record, or to obtain a copy thereof, should submit a request in writing to the Freedom of Information Officer, Maritime Administration, Room 7300, 400 Seventh Street, NW., Washington, DC 20590. Each request should be accompanied by a signed authorization to conduct the search and agreement to pay any costs incurred. Prepayment may be required before delivery is made. The requester may stipulate a maximum fee which he or she will pay.

5. The official having authority to make determinations on requests, pursuant to the Freedom of Information Act, is the Freedom of Information Officer or an appropriate designee.

6. *Appeal of determination not to disclose records and/or waive fees.* Any person who has been notified that a record or part of a record that has been requested will not be disclosed, or that a request for a fee waiver or reduction will not be granted, either in whole or in

part, may appeal in writing to the Maritime Administrator, Maritime Administration, Room 7206, 400 Seventh Street, SW., Washington, DC 20590. The decision of the Maritime Administrator is administratively final.

Appendix J—Research and Special Programs Administration

1. General

This appendix describes the document inspection facilities of the Research and Special Programs Administration (RSPA), the kinds of records that are available for inspection and copying at these facilities, and the procedures by which members of the public may make requests for reasonably described records.

2. Document Inspection Facilities

Document inspection facilities are maintained at the RSPA Headquarters Office, the Office of Hazardous Materials Transportation (OHMT), the Office of Pipeline Safety (OPS), the Office of Aviation Information Management (OAIM), and the Transportation Systems Center (TSC) in Cambridge, Massachusetts. These facilities are open to the public from 9:00 a.m. to 4:30 p.m. ET, Monday through Friday, except legal public holidays and other special closings, at the following locations:

RSPA Headquarters

Freedom of Information Officer, Research and Special Programs Administration, Room 8406, 400 Seventh Street, SW., Washington, DC 20590.

Office of Hazardous Materials Transportation, DHM-50, Room 8424, 400 Seventh Street, SW., Washington, DC 20590.

Office of Pipeline Safety, DPS-1, Room 8417, 400 Seventh Street, SW., Washington, DC 20590.

Office of Aviation Information Management

Chief of Data Services Branch, Data Requirements and Public Reports Division, Room 4201, 400 Seventh Street, SW., Washington, DC 20590.

Transportation Systems Center

Public Information Officer, Transportation Systems Center, 55 Broadway, Kendall Square, Cambridge, MA 02142.

3. Records Available Through Document Inspection Facilities

(a) The following records are available through the RSPA Headquarters document inspection facility:

(1) Final opinions (including concurring and dissenting opinions, if any) and orders made in the adjudication of cases and issued by the

Research and Special Programs Administration.

(2) Any policy or interpretation issued by the Research and Special Programs Administration, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(3) Any administrative staff manual or instruction to staff, issued by the Research and Special Programs Administration, that affects any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public.

(4) *RSPA Orders*. RSPA orders are issued by the Research and Special Programs Administration and are used primarily to promulgate internal RSPA policy, instructions, and general guidance.

(5) *RSPA Notices*. RSPA notices are issued by the Research and Special Programs Administration and contain short-term instructions or information which is expected to remain in effect for less than 90 days or for a predetermined period of time normally not to exceed one year.

(6) Indices to the material described in (1) through (5).

(b) The following records are available through the Materials Transportation Bureau document inspection facility:

(1) Final opinions (including concurring and dissenting opinions, if any) and orders made in the adjudication of cases and issued by the Materials Transportation Bureau.

(2) Any policy or interpretation issued by the Research and Special Programs Administration, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(3) Any administrative staff manual or instruction to staff, issued by the Materials Transportation Bureau, that affects any member of the public including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public.

(4) Indices to the material described in (1) through (3).

(c) The following records are available through the Data Services Branch of the Office of Aviation Information Management's inspection facility:

(1) Air Carrier Forms 41, 183, 217, 251, 291, 296-R, 298C, ICAO Supplemental Reports and ER-586 and Origination and Destination outputs which are maintained as a data base and reference source.

(d) The following records are available through the Transportation Systems Center document inspection facility:

(1) *RSPA Orders*. (Described in paragraph (a)(4) above).

(2) *RSPA Notices*. (Described in paragraph (a)(5) above).

(3) *TSC Orders*. TSC orders are issued by the Transportation Systems Center and are used primarily to promulgate internal TSC policy, instructions, and general guidance.

(4) *TSC Notices*. TSC notices are issued by the Transportation Systems Center and contain short-term instructions or information which is expected to remain in effect for less than 90 days or for a predetermined period of time normally not to exceed one year.

(5) Indices to the material described in (1) through (4).

(d) The records and the indexes may be inspected at each facility without charge. A prepayment of fees may be required before copies of records may be obtained, as described in Subpart I of this part.

4. Requests for Records Under Subpart F of this Part

Each person desiring to inspect a record, or to obtain a copy thereof, should submit a request in writing to the appropriate RSPA document inspection facility as identified in paragraph 2 of this Appendix. Should that facility not have custody of the record, it will forward the request to the appropriate office. If the location of the record is not known, the request should be submitted to the Freedom of Information Officer, RSPA Headquarters, and that official will forward the request to the appropriate office. Each request should be accompanied by a signed authorization to conduct the search and agreement to pay any costs incurred. Prepayment may be required before delivery is made. The requester may stipulate a maximum fee which he or she will pay.

5. Reconsideration of Determination not to Disclose Records and to Deny Fee Waivers

Any person who has been notified that a record or part of a record that has been requested will not be disclosed or that a request for a fee waiver or reduction will not be granted, either in whole or in part, may appeal, in writing, to the Research and Special Programs Administrator, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, for a reconsideration of the determination. The decision of the Administrator is administratively final.

[FR Doc. 88-17962 Filed 8-10-88; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 80629-8129]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of approval of an amendment to a fishery management plan.

SUMMARY: NOAA announces the approval of Amendment 8 to the Fishery Management Plan for Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California (FMP). The amendment addresses issues of habitat and vessel access. The amendment is intended to conform with changes in the Magnuson Fishery Conservation and Management Act which were implemented in 1986.

EFFECTIVE DATE: August 8, 1988.

ADDRESSES: Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the Office of the NMFS Northwest Regional Director (Director, Northwest Region NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070).

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206-526-6140, or Rodney R. McInnis, 213-514-6199.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Pacific Fishery Management Council (Council), and approved by the Secretary of Commerce (Secretary) on March 2, 1978. Since then, the FMP has been amended seven times.

with implementing regulations at 50 CFR Part 661.

A 1986 amendment (Pub. L. 99-659) to the Magnuson Act requires that any FMP amendment occurring after January 1, 1987, must (1) include readily available information regarding the significance of habitat to the fishery and assessment of the effects that changes to that habitat may have upon the fishery; and (2) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safety of vessels.

Under that Magnuson Act amendment, Amendment 8 to the FMP includes (1) a description of habitat to be appended to the FMP, and (2) a statement that the issue of temporary access by vessels denied harvest opportunity by unsafe weather or ocean conditions was considered and that no regulatory changes are needed to meet the Magnuson Act mandate.

The Council submitted Amendment 8 for review by the Secretary of Commerce of February 1, 1988. The Secretary filed a Notice of Availability (53 FR 3225, February 4, 1988), announcing a public comment period until March 31, 1988.

One comment was received from the U.S. Coast Guard.

Comment: The U.S. Coast Guard stated its preference for an option which would have codified the Council's current practice of preseason and inseason consideration of vessel safety/access issues and consulting with the U.S. Coast Guard. This option would modify the FMP to specify adverse weather and ocean conditions as an example of "other factors as appropriate" on the list of factors taken into account when making inseason adjustments to management measures, and require formal consultation with the U.S. Coast Guard in the inseason management process if ocean conditions were potentially dangerous to salmon fishing vessels. The U.S. Coast Guard stated that the inseason management process under this option should be followed for all season openings, not just those short seasons to catch remnant quotas.

Response: Although the Council did not choose this option, NOAA believes that the concerns of the U.S. Coast Guard are adequately addressed under current practices for preseason and inseason management, codifying such procedures is not necessary, and the Council will continue to seek advice of

the U.S. Coast Guard on vessel safety/access considerations. Weather and ocean conditions as they affect vessel safety/access have been accounted for in setting past inseason management actions where appropriate. Furthermore, delaying a scheduled opening due to inclement weather is possible under current procedures, although such a determination is complex involving elements of uncertainty and harvest allocation as well as safety.

Amendment 8 has no implementing regulations. For this reason, a regulatory impact review/regulatory flexibility analysis, normally required by the Regulatory Flexibility Act and Executive Order 12291, was not prepared. The Paperwork Reduction Act does not apply since neither an information collection nor a record-keeping requirement is included in the amendment.

NOAA determined that the amendment is consistent to the maximum extent practicable with the approved coastal zone management programs of Washington, Oregon, California, and the San Francisco Bay Conservation and Development Commission. None of the States disagreed with this determination.

An environmental assessment (EA) prepared by the Council concluded that neither approval nor disapproval of any option presented in the amendment would significantly affect the quality of the human environment in a way that has not already been contemplated in the supplemental environmental impact statement for the FMP. Based upon the EA, the Assistant Administrator for Fisheries determined that this amendment would not significantly affect the quality of the human environment as defined under the National Environmental Policy Act.

The Secretary approved Amendment 8 on May 5, 1988, and determined that it is consistent with the Magnuson Act and other applicable law. Therefore, NOAA issues this notice announcing approval of Amendment 8 to the FMP.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: August 8, 1988.

James W. Brennan,

Assistant Administrator For Fisheries,
National Marine Fisheries Service.

[FR Doc. 88-18215 Filed 8-8-88; 5:02 pm]

BILLING CODE 3510-22-M

50 CFR Part 661

[Docket No. 80482-8082]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces the rescission of a scheduled 3-day closure of the ocean commercial salmon fishery within the exclusive economic zone (EEZ) between Cape Falcon, Oregon, and Horse Mountain, California, which was to have occurred upon the projected attainment of 85 percent of the coho salmon quota for the area south of Cape Falcon, as stated in the preseason announcement of 1988 management measures. The scheduled 3-day closure was developed in anticipation of a high-effort fishery; it would have provided time for the Pacific Fishery Management Council's Salmon Technical Team to assess landings and determine if enough fish remained in the quota to warrant additional fishing. However, because commercial fishing effort between Cape Falcon and the Orford Reef Red Buoy, Oregon, is being assessed in a timely fashion and is currently lower than preseason predictions, the Director, Northwest Region, NMFS (Regional Director), has determined that a closure to assess data is unnecessary and would unjustifiably disrupt the commercial salmon fishing season in the area. This action is intended to maximize the harvest of coho salmon in this area without exceeding the ocean share of coho salmon allocated to the commercial fishery.

EFFECTIVE DATE: Rescission of the required 3-day closure to ocean commercial salmon fishing in the EEZ in the area which remains open between Cape Falcon, Oregon, and Horse Mountain California, upon the projected attainment of 85 percent of the coho salmon quota for the area south of Cape Falcon is effective on August 8, 1988. Comments on this adjustment will be received through August 23, 1988.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731-7415. Information relevant to this notice has been compiled in aggregate form and is

available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140, or Rodney R. McInnis at 213-514-6199.

SUPPLEMENTARY INFORMATION:

Regulations governing the ocean salmon fisheries are codified at 50 CFR Part 661. Management measures for 1988 were effective on May 1, 1988 (53 FR 16002, May 4, 1988). The 1988 commercial fishery from Cape Falcon, Oregon, to Horse Mountain, California, is required by the 1988 regulations to close for 3 days to allow assessment of landings and projection of the remaining all-species fishing period when the Salmon Technical Team estimates that 85 percent of the coho salmon quota for the area south of Cape Falcon has been reached (53 FR 16007). Currently, only the area from Cape Falcon to the Orford Reef Red Buoy, Oregon, is open to commercial salmon fishing. The area between Humbug Mountain, Oregon, and Punta Gorda, California, closed on June 7, 1988 (53 FR 22000, June 13, 1988).

It was anticipated preseason that harvest in the commercial fishery in the affected area would occur rapidly with high fishing effort, thus necessitating a 3-day closed period when 85 percent of the coho salmon quota was reached to allow assessment of landing data and projection of the amount of fishing time remaining. However, commercial fishing effort between Cape Falcon and Orford Reef Red Buoy is currently lower than preseason predictions, and landing data are being assessed in a timely manner.

Therefore, the scheduled 3-day closure is no longer necessary to bring data up to date.

Consequently, NOAA issues this notice to rescind the scheduled 3-day closure of the EEZ in that area which remains open between Cape Falcon, Oregon, and Horse Mountain, California, to ocean commercial salmon fishing upon the projected attainment of 85 percent of the coho salmon quota for the total area south of Cape Falcon. This notice is effective [insert date of filing for public inspection with the Office of the Federal Register]. This notice does not apply to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Oregon Department of Fish and Wildlife, and the California Department of Fish and Game regarding the rescission of the required 3-day closure of the commercial fishery between Cape Falcon and the Orford Reef Red Buoy. The State of Oregon also will rescind the 3-day closure of the commercial fishery in state waters adjacent to this area of the EEZ in accordance with this Federal action.

Because of the need for immediate action to prevent unnecessary closure of the fishery, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after the effective date, through August 23, 1988.

Federal regulations at 50 CFR 661.21(b)(1)(i) authorize the modification of fishing seasons if certain findings are made as described in the appendix to 50 CFR Part 661, section III.B. Accordingly, the Regional Director has determined this inseason adjustment is consistent with fishery regimes established by the U.S.-Canada Pacific Salmon Commission, ocean escapement goals, conservation of the salmon resource, any adjudicated fishing rights, and the ocean allocation scheme in the Fishery Management Plan for Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California. This inseason adjustment is based on consideration of the total allowable impact limitation for coho salmon south of Cape Falcon, Oregon, the amount of commercial and recreational catch of coho salmon in the area to date, and the amount of commercial fishing effort in the area to date.

Other Matters

This section is authorized by 50 CFR 661.21(b)(1)(i) and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 8, 1988.

Joe P. Clem,

*Acting Director of Office of Fisheries,
Conservation and Management, National
Marine Fisheries Service.*

[FR Doc. 88-18214 Filed 8-8-88; 4:50 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 53, No. 155

Thursday, August 11, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

California Kiwifruit; Proposed Increase in Expenses

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would increase and revise the authorized expenses under Marketing Order 920 for the 1988-89 fiscal period. Amending this budget would allow the Kiwifruit Administrative Committee to incur expenses reasonable and necessary to administer the program. Funds for this program would be derived from assessments on handlers.

DATE: Comments must be received by August 22, 1988.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085-S, Washington, DC 20090-6456. Comments should reference the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Todd A. Delello, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-475-5610.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 920 (7 CFR Part 920) regulating the handling of kiwifruit grown in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and

Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 145 handlers of California kiwifruit under this marketing order, and approximately 1225 California kiwifruit producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of the handlers and producers may be classified as small entities.

The marketing order requires that the assessment rate for a particular fiscal year apply to all assessable kiwifruit handled from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of kiwifruit. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of kiwifruit. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A

recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The Kiwifruit Administrative Committee (KAC) met on July 12, 1988 and revised the budget for the fiscal period which began August 1, 1988. The amended budget would total \$129,025 instead of the currently approved \$112,618. The amended budget would revise several major expense items, including an increase in field staff salaries from \$29,650 to \$41,010, and an increase in the pension plan from \$2,860 to \$5,337. Also, an additional \$5,000 was recommended for the purchase of microwave ovens and digital scales, to be used by the field staff to demonstrate a new method of measuring kiwifruit maturity. It would be useful to introduce the testing procedure to the handlers now, since it is under consideration as a future regulatory requirement.

The assessment rate of \$.0125 is unchanged and the same as last year. Projected shipments of 8.7 million trays would yield \$108,750 in assessment income. This income, when added to approximately \$20,000 from the reserve, would be adequate to cover budgeted expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the assessment rate approval for this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 920

Marketing agreements and orders, Kiwifruit (California).

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 920 be amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 920 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 920.204 is revised to read as follows:

§ 920.204 Expenses and assessment rate.

Expenses of \$129,025 by the Kiwifruit Administrative Committee are authorized and an assessment rate of \$0.0125 per 7½ pound tray or equivalent is established for the fiscal year ending July 31, 1989. Unexpected funds may be carried over as a reserve.

Dated: August 8, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-18207 Filed 8-10-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1065

[DA-88-116]

Milk in the Nebraska-Western Iowa Marketing Area; Proposed Temporary Revision of Supply Plant Shipping Percentage and Diversion Limitation Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed temporary revision of rule.

SUMMARY: This notice invites written comments on a proposal to revise temporarily certain provisions of the Nebraska-Western Iowa Federal milk order. The proposed action would reduce for September 1988 through March 1989 the percentage of supply plant receipts that must be transferred or diverted to pool distributing plants in order for the supply plant to maintain pool status. The limits on the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order would also be revised temporarily, from 40 percent to 60 percent, for the same period. The action was requested by a cooperative which operates pool supply plants and represents a significant number of producers whose milk is pooled under the order. The cooperative states that the temporary revisions are needed to maintain the pool status of

producers historically associated with the Nebraska-Western Iowa order and to prevent uneconomic movements of milk.

DATE: Comments are due no later than August 26, 1988.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7183.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the provisions of §§ 1065.7(b)(3) and 1065.13(d)(4) of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Nebraska-Western Iowa marketing area is being considered for the months of September 1988 through March 1989.

All persons who desire to submit written data, views or arguments about the proposed revisions should send two copies of their views to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 15th day after publication of this notice in the *Federal Register*.

The comments that are sent will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

The provisions proposed to be revised are the supply plant shipping percentages set forth in § 1065.7(b) and the diversion limits set forth in § 1065.13(d). The revisions would be

applicable for the months of September 1988 through March 1989. The specific revisions would reduce the supply plant shipping percentage for the months of September 1988 through March 1989 by 10 percentage points from the present 40 percent to 30 percent. For the same period, the diversion limits on producer milk would be increased by 20 percentage points, from 40 percent to 60 percent.

Pursuant to the provisions of § 1065.7(b)(3) of the Nebraska-Western Iowa milk order, the Director of the Dairy Division may increase or decrease the supply plant shipping percentage as set forth in § 1065.7(b) by up to 20 percentage points during any month. Similarly, § 1065.13(d) allows the Director of the Dairy Division to increase or decrease the diversion limitation percentages by up to 20 percentage points during any month. These provisions help to encourage additional milk shipments needed to assure an adequate supply of milk to fluid handlers, or to prevent uneconomic shipments of milk merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Associated Milk Producers, Inc. (AMPI), a cooperative association operating supply plants historically pooled under the Nebraska-Western Iowa order and representing producers supplying a significant portion of the producer milk pooled under the order, requested that for the months of September 1988 through March 1989, the supply plant shipping percentage requirement be reduced by 10 percentage points and the diversion limit on producer milk be increased by 20 percentage points.

The cooperative states that producer milk pooled under the Nebraska-Western Iowa order during the first six months of 1988 is 13.4 percent above the same period of 1987, while Class I sales for the same time period are virtually identical.

Given the present combination of production increases combined with static Class I sales, AMPI estimates that the percentage of producer milk used in Class I during the months of September 1988 through March 1989 is unlikely to be more than 35 percent. AMPI states that a 35-percent level of Class I utilization would make it difficult to justify a requirement that 60 percent of producer milk be moved to pool plants. According to the cooperative, such a requirement would involve delivering milk to pool plants, then pumping it back out into trucks that would haul it to

nonpool plants where the milk could be used.

Because of the expected relationship between milk production and the Class I needs of the market, AMPI states that 60 percent would be a more appropriate limit on diversions of producer milk to nonpool plants than 40 percent, and that 30 percent would be a more appropriate shipping requirement for pool supply plants than 40 percent. According to the cooperative, the requested temporary revisions would allow AMPI to avoid engaging in uneconomic and inefficient milk movements in order to maintain the pool status of the milk of its members who have historically supplied the fluid needs of the Nebraska-Western Iowa marketing area.

Therefore, it may be appropriate to relax the aforementioned provisions of §§ 1065.7(b) and 1065.13(d) for the months of September 1988 through March 1989 to prevent uneconomic shipments of milk, and to assure that dairy farmers long associated with the fluid milk market will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

List of Subjects in 7 CFR Part 1065

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1065 continues to read as follows:

Authority: (Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

Signed at Washington, DC, on August 8, 1988.

W.H. Blanchard,

Acting Director, Dairy Division.

[FR Doc. 88-18210 Filed 8-10-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1079

[DA-88-115]

Milk in the Iowa Marketing Area; Proposed Temporary Revision of Shipping Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed temporary revision of rule.

SUMMARY: This notice invites written comments on a proposal to relax temporarily certain provisions of the Iowa Federal milk order. The proposed action would relax for September through November 1988 the supply plant shipping requirements. This action was requested by the operator of a pool supply plant who ships milk to

distributing plants regulated by the order.

DATE: Comments are due on or before August 18, 1988.

ADDRESS: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. The action would lessen the regulatory impact on certain milk handlers and would tend to ensure that the market would be adequately supplied with milk for fluid use with a small proportion of milk shipments from pool supply plants.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the provisions of § 1079.7(b)(1) of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Iowa marketing area, 7 CFR Part 1079, is being considered for the month of September, October and November 1988.

All persons who want to send written data, views or arguments about the proposed revision should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the Federal Register. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include September 1988 in the temporary revision period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The provisions proposed to be temporarily revised are the supply plant shipping percentages for the months of September, October and November 1988. The proposed action would reduce the shipping requirement 10 percentage points from the present 35 percent to 25 percent.

Pursuant to the provisions of § 1079.7(b)(1), the supply plant shipping percentages set forth in § 1079.7(b) may be increased or decreased by up to 10 percentage points during any month to encourage additional milk shipments to pool distributing plants or to prevent uneconomic shipments.

Beatrice Companies, Inc. (Beatrice), on behalf of Beatrice Cheese, requested this action in order to prevent uneconomic shipments of milk during September, October and November 1988. Beatrice said that the market's producer milk receipts showed an increase each month over the same month of 1987. The monthly increases for this period cited by Beatrice were less than 1.0 percent for April, about 2.5 for May and 3.3 for June. Beatrice indicated that receipts at their supply plant increased for this same period by 2.7, 1.4 and 3.3 percent and that they expect their receipts for the balance of 1988 to continue this trend. Beatrice also indicated that without a downward revision in the supply plant shipping standards, it would have to uneconomically backhaul approximately 2.8 to 3.2 million pounds of milk per month in order to pool this milk.

The petitioner stated that distributing plants could be adequately served if supply plant shipping requirements were lowered to 25 percent. Beatrice said that thus there will be no need for supply plants to ship as much as 35 percent of their producer receipts and that a temporary lowering of the supply plant shipping requirement to a 25-percent shipping standard, is needed to prevent uneconomic shipments of fluid milk.

Concurrently issued with this proposed action is a proposed suspension of a portion of the diversion limitation provisions for the same period. Associated Milk Producers, Inc., requested the suspension citing similar supply-demand conditions in the market.

List of Subjects in 7 CFR Part 1079

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1079 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Signed at Washington, DC, on August 8, 1988.

W.H. Blanchard,

Acting Director, Dairy Division.

[FR Doc. 88-18209 Filed 8-10-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1079

[DA-88-117]

Milk in the Iowa Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend for the months of September through November 1988 a portion of the Iowa Federal milk marketing order. The proposed suspension would increase the limits on the quantity of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. A cooperative association requested the suspension in order to maintain pool status for the milk of its member producers without incurring costs for hauling and handling milk that would otherwise be unnecessary.

DATE: Comments are due on or before August 18, 1988.

ADDRESS: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed under Executive Order 12291 and

Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of milk in the Iowa marketing area is being considered for September through November 1988:

In § 1079.13(d) (2) and (3), the words "50 percent in the months of September through November and", and the words "in other months," as they appear in each such paragraph.

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the *Federal Register*. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include September 1988 in the suspension period, if this is found necessary.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would allow more than 50 percent of a handler's producer milk receipts to be moved directly from farms to nonpool plants (diverted) and still be priced under the order during the months of September, October, and November 1988. The proposal was submitted by Associated Milk Producers, Inc. (AMPI), a cooperative association of producers. AMPI maintains that the diversion limits need to be relaxed in order to avoid the costs associated with receiving and transferring milk merely to keep it pooled.

In support of its proposal, AMPI points out that production increased for the first six months of 1988 relative to the Class I use level. January through June milk production increased approximately 4.1 percent from a year earlier, while Class I sales remain at the 1987 level of about 27 percent of production. The cooperative projects that during the fall months, only about 30 percent of the market's milk supply will be needed for Class I use. Thus, the cooperative believes that the suspension would enable them to move the other 70 percent in the most economical manner to processing facilities. This, they say,

would avoid the pumping of milk into their supply plant and the subsequent transfer to a nonpool manufacturing plant.

The Iowa order provides that up to 50 percent of a handler's producer milk supply may be diverted to nonpool plants each month during September through November. It is assumed that the other 50 percent of the milk supply will be needed to meet the market's demand for milk at bottling plants. AMPI expects, however, that because milk supplies are increasing relative to demand, the 50-percent diversion allowance will be inadequate to efficiently dispose of milk supplies associated with the market, but not needed at fluid milk plants.

The cooperative notes that if such reserve supplies cannot be pooled through the diversion provisions of the order, the only alternative is to first receive the milk at pool plants and then reload it and haul it to nonpool plants. This, according to AMPI, results in handling and hauling costs that can be avoided if the milk is pooled by diversion, and in additional pumping of milk, which adversely affects milk quality.

Simultaneously issued with this proposed suspension is a proposed temporary relaxation of the supply plant shipping standard from 35 to 25 percent for this same period requested by Beatrice Cheese, Inc. Beatrice cited similar supply-demand conditions in the market.

If the 50-percent diversion limit is suspended, a cooperative association would be able to divert up to 70 percent of its producer milk supplies. The relaxation of the supply plant shipping standard from 35 to 25 percent, if granted, would allow the operator of a pool supply plant to divert up to 70 percent of the plant's producer milk supply. Pool distributing plants, because of other pooling standards, would be able to divert up to 60 percent of the plant's producer milk supply.

List of Subjects in 7 CFR Part 1079

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1079 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Signed at Washington, DC, on August 5, 1988.

L.P. Massaro,

Acting Administrator.

[FR Doc. 88-18208 Filed 8-10-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 21 and 25**

[Docket No. NM-31, Notice No. SC-88-5-NM]

Special Conditions; Cessna Aircraft Company Model 560 Airplane**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Cessna Aircraft Company Model 560 airplane. This airplane will have an unusually high operating altitude (45,000 feet) when compared to the state of technology envisioned in the airworthiness standards of Part 25 of the Federal Aviation Regulations (FAR). This notice contains the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of Part 25.

DATE: Comments must be received on or before September 12, 1988.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attention: Rules Docket (ANM-7), Docket No. NM-31, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked: Docket No. NM-31. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Gary D. Lium, Aerospace Engineer, Regulations Branch, ANM-114, Transport Airplane Directorate, Aircraft Certification Service, FAA, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168; telephone (206) 431-2118.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the

Administrator before further rulemaking action is taken. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rule Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-31." The postcard will be date/time stamped and returned to the commenter.

Background

On June 15, 1987, Cessna Aircraft Company applied for an amendment to their type certificate No. A22CE to include their new Model 560 airplane. The Model 560, which is a derivative of the Model S550 currently approved under Type Certificate No. A22CE, is slightly larger, with a 20-inch fuselage stretch, different engines, increased horizontal tail size, increased operating weights and speeds, and an increase in operating altitude from 43,000 feet to 45,000 feet.

Under the provisions of § 21.101, Cessna Aircraft Company must show that the Model 560 meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. A22CE, or the applicable regulations in effect on the date of application for the Model 560. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. A22CE are as follows: Part 25 of the Federal Aviation Regulations, effective February 1, 1965, including Amendments 25-1 through 25-17; except §§ 25.251(e), 25.934, and 25.1091(d)(2), as amended through Amendment 25-23; §§ 25.787, 25.789, 25.791, 25.853, 25.855, 25.857, and 25.1359, as amended through Amendment 25-32; §§ 25.1385(c) and 25.1401, as amended through Amendment 25.40; § 25.1303(a)(2) as amended through Amendment 25-43; Special Conditions 25-25-CE-4; Part 36 of the Federal Aviation Regulations effective December 1, 1969, as amended at the time of certification; and SFAR 27, effective February 1, 1974, as amended at the time of certification. The special conditions which may be developed as a result of this notice will form an

additional part of the type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., Part 25 as amended) do not contain adequate or appropriate safety standards for the Model 560 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

In addition to the applicable airworthiness regulations and special conditions, the Model 560 must comply with the noise certification requirements of Part 36 and the engine requirements of Special Federal Aviation Regulation (SFAR) 27.

Novel or Unusual Design Features

The model 560 will incorporate an unusual design feature in that it will be certified to operate up to an altitude of 45,000 feet.

The FAA policy is to apply special conditions to Part 25 transports when the certificated altitude exceeds the capability of the oxygen system (in this case, the passenger system.) This has been the case for the early Learjet, Lockheed Jetstar, Aero Jet Commander, Cessna 650, and the Israel Aircraft Industries Model 1125 Westwind Astra. The special conditions for the Westwind Astra are considered the most applicable to the Cessna Model 560 and its proposed operation. They are therefore used as the basis for the proposed special conditions.

Damage tolerance methods are proposed to be used to assure vessel integrity while operating at the higher altitudes, in lieu of the 1/2-bay crack requirement used in some previous special conditions. Crack growth data is used to prescribe an inspection program which should detect cracks before an opening in the pressure vessel would allow rapid depressurization. Initial crack sizes for detection are determined under § 25.571, Amendment 25-54. The cabin altitude after failure may not exceed the cabin altitude/time curve limits shown in Figures 3 and 4. Continuous flow passenger oxygen equipment is certified for use up to 40,000 feet; however, for rapid decompressions above 34,000 feet, reverse diffusion leads to low oxygen partial pressures in the lungs, to the extent that a small percentage of

passengers may lose useful consciousness at 35,000 feet. The percentage increases to an estimated 60 percent at 40,000 feet, even with the use of the continuous flow system. To prevent permanent physiological damage, the cabin altitude must not exceed 25,000 feet for more than 2 minutes. The maximum peak cabin altitude of 40,000 feet is consistent with the standards established for previous certification programs. In addition, at these altitudes the other aspects of decompression sickness have a significant, detrimental effect on pilot performance (for example, a pilot can be incapacitated by internal expanding gases).

Decompression above the 37,000 foot limit of Figure 4 approaches the physiological limits of the average person; therefore, every effort must be made to provide the pilot with adequate oxygen equipment to withstand these severe decompressions. Reducing the time interval between pressurization failure and the time the pilot receives oxygen will provide a safety margin against being incapacitated and can be accomplished by the use of mask-mounted regulators. The special condition proposed therefore requires pressure demand masks with mask-mounted regulators for the flightcrew. This combination of equipment will provide the best practical protection for the failures covered by the special conditions and for improbable failures not covered by the special conditions, provided the cabin altitude is limited.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability, and it affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the

following special conditions as part of the type certification basis for the Cessna Aircraft Company Model 560 series airplane:

1. The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1561(b)(2); 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, January 12, 1983).

2. Operation to 45,000 feet.

a. Pressure Vessel Integrity.

1. The maximum extent of failure and pressure vessel opening that can be demonstrated to comply with paragraph d (Pressurization) of this special condition must be determined. It must be demonstrated by crack propagation and damage tolerance analysis supported by testing that a large opening or a more severe failure than demonstrated will not occur in normal operations.

2. Inspection schedules and procedures must be established to assure that cracks and normal fuselage leak rates will not deteriorate to the extent that an unsafe condition could exist during normal operation.

b. *Ventilation.* In lieu of the requirements of § 25.831(a), the ventilation system must be designed to provide a sufficient amount of uncontaminated air to enable the crewmembers to perform their duties without undue discomfort or fatigue, and to provide reasonable passenger comfort during normal operating conditions and also in the event of any probable failure of any system which could adversely affect the cabin ventilating air. For normal operations, crewmembers and passengers must be provided with at least 10 cubic feet of fresh air per minute per person, or the equivalent in filtered, recirculated air based on the volume and composition at the corresponding cabin pressure altitude of not more than 8,000 feet.

c. *Air Conditioning.* In addition to the requirements of § 25.831, paragraphs (b) through (e), the cabin cooling system must be designed to meet the following conditions during flight above 15,000 feet mean sea level (MSL):

1. After any probable failure, the cabin temperature-time history may not exceed the values shown in Figure 1.

2. After any improbable failure, the cabin temperature-time history may not exceed the values shown in Figure 2.

d. *Pressurization.* In addition to the requirements of § 25.841, the following apply:

1. The pressurization system, which includes for this purpose bleed air, air

conditioning, and pressure control systems, must prevent the cabin altitude from exceeding the cabin altitude-time history shown in Figure 3 after each of the following:

a. Any probable malfunction or failure of the pressurization system. The existence of undetected, latent malfunctions or failures in conjunction with probable failures must be considered.

b. Any single failure in the pressurization system combined with the occurrence of a leak produced by a complete loss of a door seal element, or a fuselage leak through an opening having an effective area 2.0 times the effective area which produces the maximum permissible fuselage leak rate approved for normal operation, which produces a more severe leak.

2. The cabin altitude-time history may not exceed that shown in Figure 4 after each of the following:

a. The maximum pressure vessel opening resulting from an initially detectable crack propagating for a period encompassing four normal inspection intervals. Mid-panel cracks and cracks through skin-stringer and skin-frame conditions must be considered.

b. The pressure vessel opening or duct failure resulting from probable damage (failure effect) while under maximum operating cabin pressure differential due to a tire burst, engine rotor burst, loss of antennas or stall warning vanes, or any probable equipment failure (bleed air, pressure control, air conditioning, electrical source(s), etc.) that affects pressurization.

c. Complete loss of thrust from all engines.

3. In showing compliance with paragraphs d1 and d2 of these special conditions (Pressurization), it may be assumed that an emergency descent is made by an approved emergency procedure. A 17-second crew recognition and reaction time must be applied between cabin altitude warning and the initiation of an emergency descent.

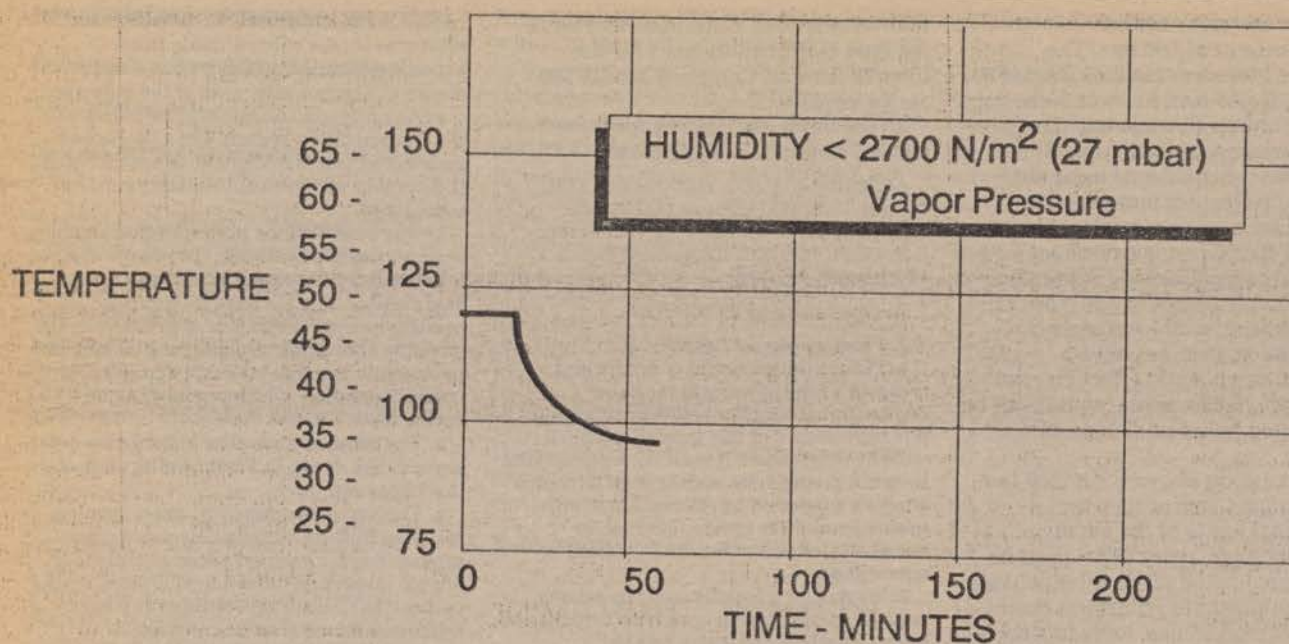
Note.—For the flight evaluation of the rapid descent, the test article must have the cabin volume representative of what is expected to be normal, such that Cessna must reduce the total cabin volume by that which would be occupied by the furnishings and total number of people.

e. Oxygen equipment and supply.

1. A continuous flow oxygen system must be provided for the passengers.

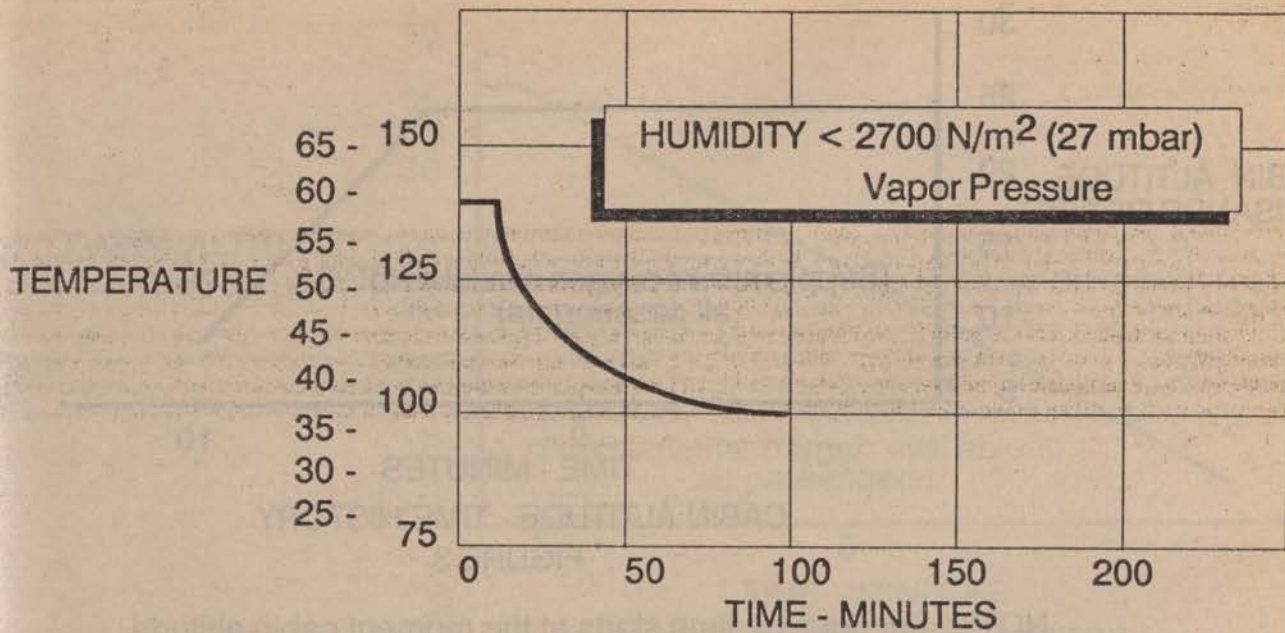
2. A quick-donning pressure demand mask with mask-mounted regulator must be provided for each pilot. Quick-donning from the stowed position must be demonstrated to show that the mask can be withdrawn from stowage and donned within 5 seconds.

BILLING CODE 4910-13-M

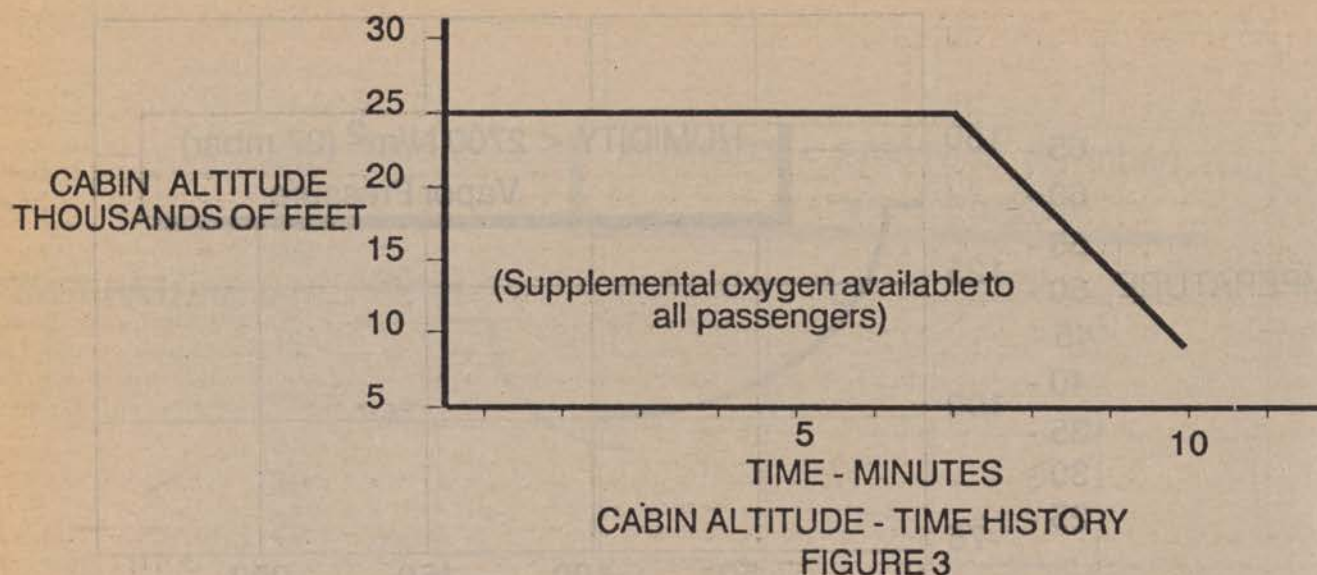


TIME - TEMPERATURE RELATIONSHIP

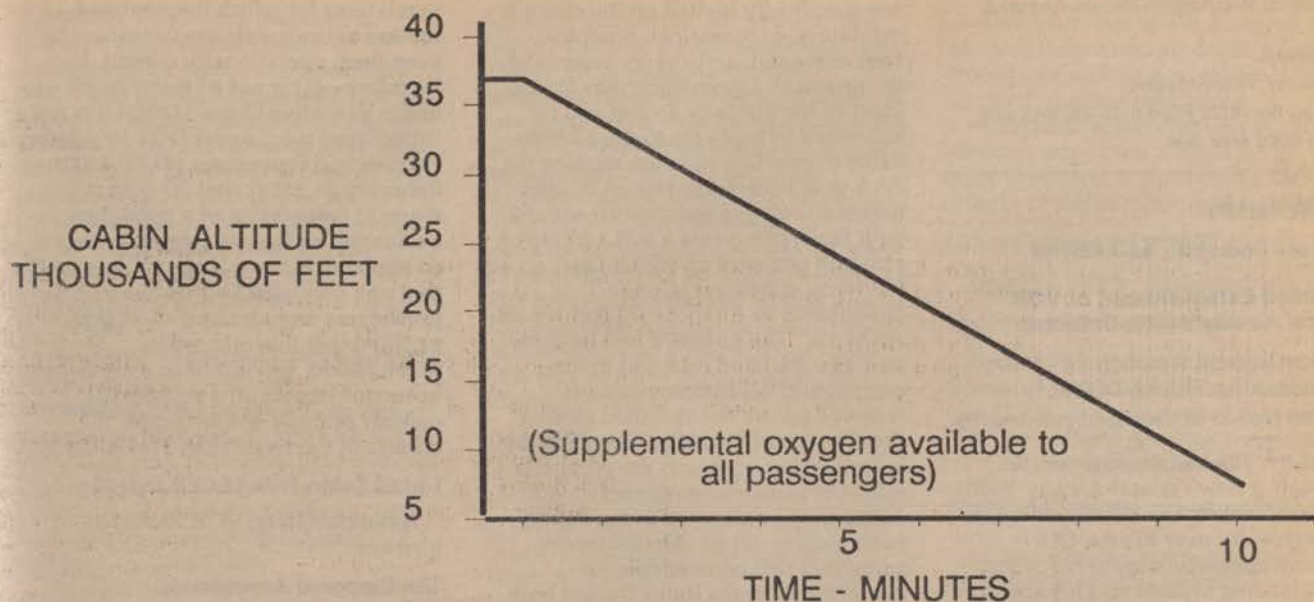
FIGURE 1



TIME - TEMPERATURE RELATIONSHIP
FIGURE 2



NOTE: For figure 3, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 30,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.



CABIN ALTITUDE - TIME HISTORY

FIGURE 4

NOTE: For figure 4, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 40,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

Issued in Washington DC, on August 2, 1988.

M.C. Beard,

Director of Airworthiness.

[FR Doc. 88-18122 Filed 8-10-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ANM-13]

Proposed Establishment of VOR Federal Airway V-593, Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate a new Federal Airway V-593 between Denver, CO, and Pueblo, CO. The arrival fix over Kiowa, CO, produces congestion in that area for traffic landing at Denver. This action would add a new airway that bypasses Kiowa for a direct route to the Denver terminal area, reduce delays and shorten the distance by nine miles.

DATES: Comments must be received on or before September 26, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Northwest Mountain Region, Attention: Manager, Air Traffic Division, Docket No. 88-ANM-13, Federal Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments

are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ANM-13." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate new VOR Federal Airway V-593 located in the vicinity of Denver, CO. We have identified the need for an airway to support procedures for the arrival traffic flow from the south. Presently, low and high altitude arrivals mix at Kiowa, CO, VORTAC, producing delays. This new airway would bypass Kiowa and shorten the route to the Denver terminal area by nine miles. This action would reduce controller workload. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical

regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-593 [New]

From Pueblo, CO, INT Pueblo 004°T(351°M) and Denver, CO, 147°T(135°M) radials; to Denver.

Issued in Washington, DC, on August 4, 1988.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-18124 Filed 8-10-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 88-ACE-8]

Proposed Change to Times of Designation for Restricted Areas R-3601A and R-3601B Brookville, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to increase the published times of designation for Restricted Areas R-3601A and R-3601B Brookville, KS. Increased training requirements have resulted in expanded use of these areas through daily activation of the currently published "other times by NOTAM" provision. This proposed action would revise the published times to reflect actual current usage and negate the need for issuing daily Notice to Airmen (NOTAM).

DATE: Comments must be received on or before September 26, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Central Region, Attention: Manager, Air Traffic Division, Docket No. 88-ACE-8, Federal Aviation Administration, 601 East 12th Street, Federal Building, Kansas City, MO 64106.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic and energy aspects of the proposal. Send comments on environmental and land use aspects to: Headquarters, ANG SC/DEV, Mail Stop 18, Andrews AFB, MD 20331. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to

Airspace Docket No. 88-ACE-8." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to expand the published times of designation for Restricted Areas R-3601A and R-3601B Brookville, KS, in order to more accurately indicate the actual times of use for these areas. The military has increased their use of these areas beyond the core hours listed for R-3601A and R-3601B. Because of this expanded operation, the user is required to modify the times of use everyday by issuance of a Notice to Airmen (NOTAM). This proposal would update the published times of use shown on aeronautical charts and delete the need for daily NOTAM's. Section 73.36 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is

so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.36 [Amended]

2. Section 73.36 is amended as follows:

R-3601A Brookville, KS [Amended]

By removing the present time of designation and substituting the following: Time of designation. Monday, Wednesday, Friday and Saturday, 0800 to 1800 local time; Tuesday and Thursday, 0800 to 2230 local time; other times by NOTAM 24 hours in advance.

R-3601B Brookville, KS [Amended]

By removing the present time of designation and substituting the following: Time of designation. Monday, Wednesday, Friday and Saturday, 0800 to 1800 local time; Tuesday and Thursday, 0800 to 2230 local time; other times by NOTAM 24 hours in advance.

Issued in Washington, DC, on August 4, 1988.

Temple H. Johnson, Jr.,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-18123 Filed 8-10-88; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Rel. No. IC-16504; File No. S7-15-88]

Offers of Exchange Involving Registered Open-End Investment Companies and Unit Investment Trusts

AGENCY: Securities and Exchange Commission.

ACTION: Revised proposed rule and request for comment.

SUMMARY: The Commission is publishing for public comment a revised rule proposal that would permit a mutual fund or its principal underwriter to make certain exchange offers to its own shareholders or to shareholders of another fund in the same group of funds. The Commission makes this proposal because of the numerous applications that have been filed with the Commission regarding mutual fund exchanges. The revised proposed rule is intended to set forth the Commission's standards for most such exchanges and reduce significantly the burden on the mutual fund industry of filing applications.

The Commission is also seeking additional comment on a proposed rule that was previously issued for comment and that would permit a unit investment trust or its sponsor to make certain exchange offers to unitholders of the same trust or to unitholders of another unit investment trust having the same sponsor. The commenters on the original proposal raised several issues. The Commission now seeks comment on alternatives to the proposal and on what further steps it should take in this area.

Finally, the Commission is considering whether to propose amendments to an existing rule that permits certain insurance company separate accounts to make offers of exchange. Such amendments are being considered because issues now under consideration in the mutual fund and unit investment trust exchange areas also apply to separate accounts. The Commission is requesting comment on insurance considerations relevant to the questions of whether and how amendments to rule 11a-2 should be implemented.

DATE: Comments must be received on or before October 11, 1988.

ADDRESS: Send comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments should refer to File No. S7-15-88. All comments will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Brian M. Kaplowitz, Chief, or Brian P. Kindelan, Special Counsel, (202) 272-2048, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is asking for public comment on a revision of proposed rule 11a-3 and for additional public comment on proposed rule 11c-1, both under section 11(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-1, *et seq.*) (the "Act"). Additionally, the Commission is asking for public comment on certain matters pertaining to whether, and, if so, how, rule 11a-2 (17 CFR 270.11a-2) under section 11 of the Act (15 U.S.C. 80a-11) should be amended.

Executive Summary

In December 1986, the Commission proposed rules 11a-3 and 11c-1, which would permit certain exchange offers by registered open-end management investment companies ("mutual funds" or "funds") and unit investment trusts ("UITs"), other than registered separate accounts.¹ The six commenters on the proposals generally supported the initiative taken by the Commission, but argued that certain provisions of the proposed rules should be modified or eliminated. As discussed below, revised proposed rule 11a-3 reflects the comments received, as well as developments occurring after issuance of the proposal.

Revised proposed rule 11a-3 would permit, subject to specified conditions, a mutual fund or its principal underwriter to make exchange offers to that fund's shareholders (*e.g.*, in the case of a series company) or to shareholders of another fund in the same group of funds. As in the initial proposal, the revised proposed rule would permit the imposition of an administrative fee and a sales load on the "acquired security" at the time of an exchange.² In addition, also like the initial proposal, revised proposed rule 11a-3 would permit a deferred sales load on the acquired security. For purposes of calculating any sales load imposed on the acquired security, both proposals would require that an exchanging shareholder receive credit for any sales load previously paid on the exchanged security and, in the case of an acquired security subject to a contingent deferred sales load, for the length of time the shareholder held the

exchanged security.³ Both proposals would also require disclosure of any administrative fee in the prospectus of the offering company and in certain sales literature and advertising.

The revised proposal contains several changes from the initial proposal. First, the revised proposed rule states that an offering company that has previously made an exchange offer cannot rely on the rule to change the terms of such prior offer unless that company's prospectus had disclosed, at all times the offer was outstanding, that the offer was subject to termination and that its terms were subject to change, unless the only effect of the change is to reduce or eliminate a charge payable at the time of the exchange. Second, the revised proposal would define the term "administrative fee" and permit the imposition of a redemption fee on the exchanged security at the time of an exchange. The intention to impose a redemption fee would also have to be disclosed in certain sales literature and advertising. Third, the revised proposed rule would expressly prohibit the imposition of a deferred sales load on the exchanged security at the time of an exchange. Such a prohibition was merely implicit in the original proposal. Fourth, the revised proposal would expand and relabel the "family of funds" concept contained in the original proposal. Fifth, the revised proposed rule would require any offering company that reserves the right to change the terms of or terminate its exchange offer to disclose in its prospectus and in certain advertising and sales literature that the offer may be terminated and that its terms are subject to change. Finally, the revised version would require that shareholders be given prior notice of any material amendment to the terms of an exchange offer, unless the only effect of the amendment is to reduce or eliminate a charge payable at the time of the exchange.

Reproposed rule 11a-3 would be prospective in effect and is intended to set forth for the entire fund industry the Commission's standards for approval of exchange offers at other than relative net asset value. Therefore, when adopted, rule 11a-3 will supersede all prior Commission orders that approved exchange offers at other than relative net asset value. Recipients of such prior orders should avail themselves of the

¹ See Investment Company Act Rel. No. 15494 (Dec. 23, 1986) [51 FR 47260, Dec. 31, 1986] ("proposing release").

² The introductory language in the revised proposal has been modified to clarify that the rule is intended to permit only the imposition of certain charges at the time of an exchange, and not to approve all of the other terms of an exchange offer.

The "acquired security" is the security of the offering company that an investor acquired in an exchange. See revised proposal rule 11a-3(a). "Sales load" is defined in section 2(a)(35) of the Act [15 U.S.C. 80a-2(a)(35)].

³ Revised proposed rule 11a-3(c)(3) would define the term "exchanged security" to include the security actually exchanged under an exchange offer, and any security previously exchanged for the security actually exchanged or for any of its predecessors.

comment process on rule 11a-3, if they so desire.

The Commission is also requesting additional public comment on proposed rule 11c-1. Proposed rule 11c-1 would permit, subject to certain conditions, a UIT or its sponsor to make certain exchange offers to unitholders of the same trust or another UIT having the same sponsor. Because of concerns raised by the commenters, the Commission is requesting additional comment on whether and how it should proceed with a rulemaking initiative in this area.

Finally, the Commission is considering whether to propose amendments to rule 11a-2, which permits, under certain conditions, offers of exchange by registered separate accounts. The Commission is asking for public comment on insurance considerations relevant to proposing amendments to the rule.

Background

Section 11(a) of the Act provides that unless an exchange offer made by a mutual fund or its principal underwriter to the fund's own shareholders, or to the shareholders of another mutual fund, is made on the basis of the relative net asset values of the shares to be exchanged, the terms of the offer must first be approved by the Commission or comply with any rules that the Commission may have prescribed. Section 11(c), by reference to section 11(a), provides that the terms of any exchange offer involving the securities of a UIT must first be approved by the Commission or comply with any rules that the Commission may have prescribed.

The legislative history of section 11 and the reasons for proposing rules 11a-3 and 11c-1 are discussed thoroughly in Investment Company Act Release No. 15494 (December 23, 1986) (the "proposing release"), and will not be repeated here. In brief, proposed rule 11a-3 would have permitted a mutual fund or its principal underwriter to make certain exchange offers to that fund's shareholders or to shareholders of another fund in the same family of funds. Proposed rule 11c-1 would have permitted a UIT or its sponsor to make certain exchange offers to unitholders of the same UIT or to unitholders of another UIT having the same sponsor.

In response to proposed rule 11a-3, five of the six commenters generally expressed support for the initiative, but argued that certain provisions should be modified or clarified.⁴ Moreover, other

developments have come to light that indicate a need for modification of the original proposal. Specifically, some fund families that have a liberal exchange policy may experience a heavy volume of exchanges to the detriment of shareholders remaining in certain funds. Excessive exchange activity may increase fund expenses⁵ and force portfolio managers to maintain a large cash position to meet possible redemptions due to exchanges.⁶ Recently, several funds have imposed new restrictions on their exchange privileges and other funds may follow suit.

The imposition of restrictions on existing exchange privileges, however, raises its own set of problems. While such restrictions may benefit investors who seldom, if ever, use exchange privileges, they may be unfair to those investors who bought shares in reliance on unlimited or free exchange privileges.⁷

Also, in some applications received after the proposal of rule 11a-3, applicants have sought permission to calculate the amount of a contingent deferred sales load ("CDSL") imposed at the time an acquired security is redeemed in a manner that differs from that described in the vast majority of the applications received prior to the proposal.⁸ Under almost all of the orders issued before proposed rule 11a-3, any CDSL on the acquired security is calculated as if the acquired security were held from the date on which the exchanged security was acquired.⁹

several representatives of the Commission's Division of Investment Management. A memorandum submitted by the commenter after that meeting and a staff memorandum discussing the meeting were placed in the public comment file on the proposed rules.

⁴ For example, funds may be required to liquidate assets, thereby incurring brokerage commissions. See discussion of redemption fees, *infra*, at notes 37-45 and accompanying text.

⁵ See *Managers Closely Watch Redemptions*, Wall St. J., Oct. 27, 1987, at 41, col. 1; *Fidelity Sector Funds Sustain Big Hits*, Wall St. J., Oct. 23, 1987, at 45, col. 1.

⁶ See *Some Funds Act To Discourage Phone Switches*, Wall St. J., Feb. 8, 1988, at 27, col. 3; *Fidelity Curbs Switching in Sector Funds*, Wall St. J., Apr. 13, 1987, at 45, col. 1.

⁷ A CDSL is a sales load that is paid by the shareholder at the time fund shares are redeemed and the amount of which varies with the length of time the redeemed shares were held. The CDSL may be eliminated entirely if redemption does not occur before a specified period of time. For instance, a typical CDSL might consist of a five percent charge on redemptions of shares made within one year of purchase. In each successive year, the percentage of the sales load would be reduced by one percent, with the result that a redemption of shares that had been held for more than five years would not be subject to any sales load.

⁸ See, e.g., *Freedom Investment Trust*, et al., Investment Company Act Rel. Nos. 15075 (Apr. 28,

1986) [51 FR 16692, May 5, 1986] (notice of application) and 15118 (May 28, 1986) (order). Proposed rule 11a-3(a)(3) would have required such tacking of the time an investor held both the exchanged and the acquired securities for purposes of calculating the CDSL on the acquired security.

10 See, e.g., *Tucker Anthony Mutual Fund*, et al., Investment Company Act Rel. Nos. 15708 (Apr. 28, 1987) [52 FR 16474, May 5, 1987] (notice of application) and 15745 (May 19, 1987) (order). See also notes 33-36, *infra*, and accompanying text.

11 See *Investment Company Act Rel. No. 13407* [July 28, 1983] [48 FR 3643, Aug. 10, 1983] (adopting release for rule 11a-2).

Section 1(a)(37) of the Act [15 U.S.C. 80a-2(a)(37)] defines "separate account" as "an account established and maintained by an insurance company pursuant to the laws of any State or territory of the United States, or of Canada or any province thereof, under which income, gains and losses, whether or not related, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company."

"Separate account" is similarly defined in rule 0-1(e) under the Act [17 CFR 270.0-1(e)] for purposes of the availability of certain exemptive rules, including rule 11a-2.

⁴ In addition to the comment letters received, a representative of one of the commenters met with

in the exchange offer area. If revised proposed rule 11a-3 is adopted, therefore, the Commission intends to consider whether to propose amendments to rule 11a-2 so that, to the extent possible, the two rules will contain similar provisions. The Commission is now asking for comment on insurance considerations relevant to amending rule 11a-2.

Discussion

A. Revised Proposed Rule 11a-3

This section discusses provisions in the revised proposed rule that reflect changes from the initial proposal, as well as provisions that have been left unchanged.

1. Effect of Revised Proposed Rule on Prior Orders

In conjunction with the proposing release, the Commission issued a notice proposing to amend fifty orders previously issued under the Act (the "prior orders") to conform the prior orders to the proposed rule, when adopted.¹² The prior orders approve exchanges between mutual funds where an administrative or other processing fee is imposed. The notice stated that "[a]ny interested person may request a hearing on amendment of a particular Prior Order or ask to be notified if a hearing is ordered." The Commission received responses covering six of the prior orders.

The Commission has determined that it is not necessary to give individual hearings to the holders of the prior orders or to any other person. There is no need for such hearings because the re-proposed rule would be prospective in effect and is intended to set forth for the entire industry the Commission's standards for approval of exchange offers at other than relative net asset value. Moreover, all of the rule's provisions would apply, not just those governing disclosure of administrative fees. Recipients of prior orders may make their views known in the context of the comment process that accompanies Commission rulemaking, and those views will be given due consideration.¹³ Similarly, holders of orders not involving administrative fees (e.g., any other type of order regarding an exchange at other than relative net

asset value) should avail themselves of the comment process, if they so desire.¹⁴

2. Funds That May Rely on the Rule

Revised proposed rule 11a-3 would provide specifically that any offering company that has previously made an offer of exchange cannot rely on the rule to amend the terms of such prior offer unless the prospectus of the offering company had disclosed, at all times the offer was outstanding, that the offer was subject to termination and its terms were subject to change.¹⁵ Revised proposed rule 11a-3 is intended to provide generic relief from section 11 for many exchange offers made at other than relative net asset value. Conditioning use of the rule on prior prospectus disclosure recognizes that some funds with existing exchange privileges previously used those privileges in marketing fund shares, but may now wish to rely on the rule to change the privileges so as to restrict effectively their use. For example, such a fund may seek to impose an administrative charge or redemption fee on an exchange, or increase an administrative charge permitted by a prior order. Such changes may raise questions of fairness with respect to those shareholders who bought (and held) shares of the fund based, in part, on the existing terms of an exchange privilege. The degree of unfairness, in turn, depends partially on the past prospectus disclosure and marketing of funds with such privileges.¹⁶ At least where there has been prior prospectus disclosure that an exchange privilege may change there is some notice to investors.¹⁷ Accordingly, such past disclosure is a precondition to use of the rule.¹⁸

¹⁴ Orders issued since the initial proposal have all been conditioned specifically on compliance with rule 11a-3, when and if adopted.

¹⁵ Paragraph (a)(1) would provide an exception to the prior disclosure requirement where the only effect of an amendment is to reduce or eliminate an administrative fee, sales load or redemption fee payable at the time of an exchange.

¹⁶ See notes 60-64, *infra*, and accompanying text.

¹⁷ The Commission is not requiring that funds use any particular language for the necessary disclosure, but such disclosure should be clear and unambiguous.

¹⁸ Once rule 11a-3 is adopted, any fund that (i) proposes to restrict materially the terms of an exchange offer, (ii) would require an order under section 11 after such amendment, and (iii) is unable to rely on rule 11a-3, would be required to obtain an individual order (or an amended order, as appropriate) prior to changing the terms of the offer. In reviewing applications from such funds, the staff would use rule 11a-3, as adopted, as a guideline. The Commission would expect applicants to comply, to the extent possible, with the terms of rule 11a-3 and to demonstrate either that existing shareholders who were not on notice that the terms of the offer could change would not be harmed by

The Commission seeks comment, however, on whether it is necessary and appropriate that final rule 11a-3 state that if the appropriate prospectus disclosure was made at or before the time any investor acquired all of his shares, then the fund could rely on the rule as to that shareholder to amend an exchange offer. Alternatively, the Commission seeks comment on whether it is necessary and appropriate that final rule 11a-3 state that if the prospectus disclosure was made for a particular number of years (e.g., 2, 5, of 10 years), then the fund could rely on the rule to amend an exchange offer.

3. Calculating the Sales Load Differential

Revised proposed rule 11a-3 would permit exchanges of mutual fund shares on the basis of the relative net asset values of the securities to be exchanged plus the imposition of a sales load on the acquired security.¹⁹ Paragraph (a)(3) of the revised proposed rule would limit any sales load charged on the acquired security to a percentage that is no greater than the excess, if any, of the rate of the sales load applicable to that security in the absence of an exchange over the total rate of all sales loads previously paid on the exchanged security (the "sales load differential").²⁰ Additionally, paragraph (a)(3) of the revised proposal would limit any sales load charged upon redemption of the acquired security, that is solely the result of a deferred sales load imposed on the exchanged security, to a rate that is no greater than the excess, if any, of

the amendment, or that the application includes conditions designed to mitigate any harm suffered by such shareholders. Such conditions could include (i) permitting existing shareholders who were not on notice to continue to exchange their shares under the original terms of the exchange offer, (ii) allowing such shareholders to redeem their shares within a specified period of time without payment of any redemption fee or deferred sales load that would otherwise be applicable, or (iii) allowing such shareholders to redeem their shares and receive a total or partial refund of any front-end sales load previously paid.

¹⁹ As initially proposed, rule 11a-3(a) would have permitted the imposition of "a nominal administrative fee or a sales load". Three commenters asked that the final rule clearly state that it permits both a nominal administrative fee and a sales load to be charged. The revised proposed rule would permit either or both of these charges and would also permit the imposition of a redemption fee at the time of an exchange. In response to the commenters, revised proposed rule 11a-3 specifically states that any combination of the permitted charges may be imposed.

²⁰ Thus, paragraph (a)(3) would permit a sales load to be charged on the acquired security only if the percentage rate of the sales load otherwise applicable to that security exceeds the combined percentage rates of all sales loads previously paid by the shareholder on the exchanged security.

¹² See Investment Company Act Rel. No. 15546 (Jan. 20, 1987) [52 FR 2966, Jan. 29, 1987].

¹³ But cf. section 40(a) of the Act [15 U.S.C. 80a-39(a)] (the procedure for the issuance of orders under the Act contemplates the opportunity for hearings on an individual basis).

the applicable rate of such sales load, calculated in accordance with paragraph (a)(5) of the rule, over the total rate of all sales loads previously paid on the acquired security.

The proposed rule would have also used a sales load differential approach to limit the maximum sales load that could be charged on the acquired security. However, the proposal did not specify whether the offering company should calculate the differential by reference to the difference between the rates of the sales loads or the difference between the amounts of the sales loads. One commenter pointed out that the prevailing industry practice is to calculate the differential by referring to the rates, rather than to the amounts. The same commenter also pointed out that rule 11a-2, relating to offers of exchange involving insurance company separate accounts, permits the sales load differential to be calculated by reference to the difference in rates.²¹ Thus, the revised proposal is intended to bring the proposed rule into conformance with both rule 11a-2 and current industry practice.²²

The proposal did not specifically address the situation where the exchanged security is subject to a deferred sales load and the acquired security is subject to a front-end sales load. The revised proposal would permit the imposition of the front-end sales load at the time of exchange, but the deferred sales load for the security originally purchased (*i.e.* the exchanged security) could not be imposed until the shareholder redeems the acquired security. The proviso to paragraph (a)(3) would provide that, where a deferred sales load imposed at the time the acquired security is redeemed is solely the result of a deferred sales load imposed on the exchanged security, the rate of such sales load may not exceed a sales load differential calculated using the total rate of all sales loads previously paid on the acquired security. The crediting of any front-end sales load

on the acquired security, when determining the amount of the original deferred load that is still owed, is consistent with the other aspects of the revised proposal and with the purposes of section 11.

Finally, where a shareholder exchanges less than all of his securities, revised proposed rule 11a-3 would provide that in calculating any sales load charged on the acquired security, the security upon which the highest sales load rate was previously paid should be deemed exchanged first. An order of redemption provision is necessary because of the high degree of control that a fund may have over the order in which shares are redeemed upon an exchange, and the fact that a fund's principal underwriter may benefit if shares are redeemed in an order that results in a higher sales load.²³

4. Deferred Sales Load on the Exchanged Security

Revised proposed rule 11a-3 would prohibit specifically the imposition of a deferred sales load on any exchanged security at the time of an exchange.²⁴ Permitting a deferred sales load to be imposed at the time of an exchange could raise problems of the type with which section 11 is concerned. Even if a shareholder received credit for paying such a sales load against any sales load otherwise payable on the acquired security, there may be an enhanced incentive to engage in switching. Inducing an exchange would trigger payment of a deferred sales load, thereby permitting the fund's principal underwriter to receive payment of a sales load earlier than would otherwise be the case. Moreover, there would appear to be no corresponding benefit to

the shareholder from the accelerated payment of the sales load.²⁵

Rule 11a-3, as originally proposed, would not have authorized the imposition of a deferred sales load on the exchange security. This lack of authorization was the result of several prior orders in which the applicants represented that such a deferred sales load would not be imposed.²⁶ However, the commenters on the proposed rule generally favored permitting a deferred sales load to be imposed on the exchanged security and urged the Commission to clarify this aspect of the proposal.

In support of their position, the commenters argued that there is no reason to prohibit the imposition of a deferred sales load on the exchanged security, as long as the shareholder receives credit for that load against any sales load otherwise payable on the acquired security.²⁷ They also argued that imposing a deferred sales load at the time of an exchange, rather than upon the ultimate redemption of the acquired security, would ease the administrative and recordkeeping burden of the funds involved in the exchange.²⁸ Further, the commenters maintained that, if no deferred sales load was permitted at the time of an exchange, an investor could easily avoid paying a deferred sales load simply by exchanging securities subject to such a load for shares of a "no-load" fund, and then redeeming the shares of the "no-load" fund. Finally, one commenter argued that it would be unfair to prohibit mutual funds from imposing a deferred sales load on the exchanged security when rule 11a-2 permits certain registered separate accounts to do so.

The commenters' arguments in favor of permitting a deferred sales load to be charged on the exchanged security at the time of an exchange are

²³ Under both the initial and the revised proposals, where the exchanged security was acquired through reinvestment of dividends or capital gains distributions, that security would be deemed to have been sold with a sales load equal to the sales load previously paid on the security on which the dividend was paid or distribution made. One commenter suggested that rule 11a-3 should require that any exchanged security acquired through reinvestment of a dividend or capital gains distribution would not be subject to any sales load upon an exchange. The Commission seeks specific comment on whether final rule 11a-3 should require that any share acquired through such reinvestment not be subject to any sales load upon any exchange. It should be noted that the revised proposal would not preclude such a waiver of sales load on those shares.

²⁴ The definition of "deferred sales load" in the revised proposal differs slightly from that in the proposal. The definition was revised only to track section 2(a)(35) of the Act [15 U.S.C. 80a-2(a)(35)] and is not intended to have any substantive effect on the rule.

²⁵ In falling market, a principal underwriter could have an even greater incentive to induce an exchange because of CDSL is generally calculated based on a percentage of the lesser of the original purchase price or current net asset value. Thus, the exchange would affect the amount, not just the timing, of the deferred sales load.

²⁶ See, e.g., Freedom Investment Trust, Investment Company Act Rel. Nos. 15075 (Apr. 28, 1986) [51 FR 16602, May 5, 1986] (notice of application) and 15118 (May 28, 1986) (order); MetLife-State Street Investment Trust, et al., Investment Company Act Rel. Nos. 14940 Feb. 13, 1986 [51 FR 6338, Feb. 21, 1986] (notice of application) and 14986 (Mar. 13, 1986) (order).

²⁷ One commenter pointed out that paragraph (a)(2) of proposed rule 11a-3 would have literally required such a credit.

²⁸ One commenter maintained that transferring shareholder records between funds with different transfer agents places a heavy administrative burden on the funds involved.

²¹ See, e.g., rule 11a-2(c)(1).

²² Of course, this change is based on the assumption that the maximum sales load rates of the exchanged and acquired securities are expressed in the same terms, e.g., as a percentage of the public offering price or as a percentage of the net amount invested. If the maximum sales loads are not generally calculated using comparable rates, the sales load differential would have to be calculated by first expressing both rates in a similar manner.

Consistent with the change reflected in paragraph (a)(3) of the revised proposed rule, paragraph (a)(11)(i) also has been amended to specify that where a securityholder exchanges less than all of his securities, the security that is deemed exchanged first should be determined by reference to the security upon which the highest sales load rate was previously paid.

unpersuasive for several reasons. First, as discussed above, merely given a credit for a deferred sales load imposed at the time of an exchange does not eliminate the potential for switching.

Second, it is not necessary true that, as argued, if a deferred sales load could not be imposed, investors could easily avoid paying any sales load by exchanging into a "no-load" fund. Neither the initial nor the revised proposal would prohibit any deferred sales load to which the exchanged security was subject to be imposed when the investor redeems the acquired security.²⁹ This is true even where the acquired security is not otherwise subject to a sales load.³⁰ Therefore, an investor could not avoid paying a deferred sales load unless the offering company has structured the offer of exchange to permit such a practice.

Third, in response to the argument that rule 11a-3 should permit the imposition of a deferred sales load on an exchanged security because certain insurance company separate accounts are permitted to do so, the Commission wishes to point out that rule 11a-2 does not permit separate accounts to impose a deferred sales load on the exchanged security at the time of the exchange.³¹

²⁹ Although revised proposed rule 11a-3 would not prohibit that practice, it should be noted that paragraph (a)(5), with a limited exception, would require that any sales load imposed upon redemption of the acquired security be calculated as if the holder of the acquired security held it from the date on which he became the holder of the exchanged security. See notes 33-36, *infra*, and accompanying text. Therefore, if payment of a CDSL on the exchange security occurs when the acquired security is redeemed, the shareholder must be given full credit for both the time the exchanged security was held and the time the acquired security was held.

³⁰ For example, suppose a shareholder initially purchases shares of a fund subject to a CDSL ("Fund A"). He then exchanges those shares for shares of a no-load fund ("Fund B"), without the imposition of any CDSL at the time of the exchange. Upon the subsequent redemption from Fund B, such shares would be subject to the CDSL of Fund A. Unless the limited exception contained in the proviso to paragraph (a)(5) of the revised proposal were applicable, for purposes of calculating that charge, the shareholder's holding period would be deemed to include the entire period during which shares of both funds were held by the shareholder. This treatment is consistent with most orders. See, e.g., *Eaton Vance California Municipals Trust, et al., Investment Company Act Rel. Nos. 15829* (June 26, 1987) [52 FR 25105, July 2, 1987] (notice of application) and 15893 (July 24, 1987) (order).

³¹ The proposing release for rule 11a-2 stated: "[T]he proposed rule does not permit a contingent deferred sales load to be imposed upon the redemption of the exchanged security in connection with the exchange offer." *Investment Company Act Rel. No. 12675* (Sept. 20, 1982) [47 FR 42374, Sept. 27, 1982] at n. 17. Revised proposed rule 11a-3's prohibition of the imposition of a deferred sales load on an exchanged security at the time of an exchange would help promote competitive equality between mutual funds and insurance company

Finally, while permitting the imposition of a deferred sales load at the time of exchange may ease somewhat the administrative and recordkeeping burden on the funds involved in an exchange, almost none of the applicants for approval of exchange offers under section 11(a) have sought permission to impose such a sales load.³² Therefore, the experience of the Commission in processing applications in this area would appear to indicate that any added administrative burden has not dissuaded the vast majority of funds from waiving or postponing payment of a deferred sales load when fund shares are exchanged.

5. Tolling and CDSLs

Where an exchanged security is subject to a CDSL, paragraph (a)(5) of the revised proposed rule would permit, under certain conditions, the imposition of that CDSL on redemption of the acquired security to be calculated in a manner that would not give the investor credit for the time the acquired security was held. This "tolling" of the time during which the investor held the acquired security would be permitted only where the acquired security is not itself subject to any sales load and the issuer of the acquired security has not adopted a plan of distribution in accordance with rule 12b-1 under the Act [17 CFR 270.12b-1] (a "12b-1 plan").³³

Proposed rule 11a-3 did not permit tolling of the time used in calculating a CDSL, and the commenters did not address the issue. The Commission has, however, permitted tolling in a few orders issued after the rule proposal.³⁴

separate accounts. See note 82, *infra*, and accompanying text.

³² But see *Hutton Investment Series, Inc., et al., Investment Company Act Rel. Nos. 15797* (June 11, 1987) [52 FR 23234, June 18, 1987] (notice of application) and 15855 (July 2, 1987) (order); *Criterion Special Series, Inc., et al., Investment Company Act Rel. Nos. 16009* (Sept. 28, 1987) [52 FR 37234, Oct. 5, 1987] (notice of application) and 16073 (Oct. 23, 1987) (order). Those two orders, which permit the imposition of a CDSL at the time of certain exchanges, will be superseded upon adoption of final rule 11a-3. See notes 12-14, *supra*, and accompanying text.

³³ Rule 12b-1 permits registered open-end investment companies to use fund assets to finance the distribution of fund shares, provided that certain procedural and substantive conditions designed to protect the interests of shareholders are satisfied. It should be noted that the Commission recently proposed amendments to rule 12b-1. See *Investment Company Act Rel. No. 16431* (June 13, 1988) [53 FR 23258, June 21, 1988].

³⁴ It should be noted that one order issued prior to proposed rule 11a-3 permit tolling. See *Prudential-Bache Adjustable Rate Preferred Stock Fund, Inc., et al., Investment Company Act Rel. Nos. 14863* (Dec. 20, 1985) [50 FR 53412, Dec. 31, 1985] (notice of application) and 14902 (Jan. 16, 1986) (order).

In most cases, both funds involved in the exchange make payments for distribution out of fund assets under a 12b-1 plan, although the rate of payment under the acquired fund's 12b-1 plan is substantially lower than the rate under the exchanged fund's plan.³⁵

Given the nature of CDSLs, *i.e.* that amounts paid through a 12b-1 plan are reflected in the reduction of a CDSL over time, the Commission now believes that tolling would be inappropriate where the acquired shares are subject to a 12b-1 plan. Where a shareholder is making any payments for distribution through a 12b-1 plan, those payments should be reflected in a commensurate reduction of the CDSL owed. Because tolling would prevent a shareholder from receiving credit for the 12b-1 payments made while holding the acquired shares, the revised proposed rule would permit tolling only where the acquired shares are subject to no sales loads and the issuer of the acquired shares does not have in effect a 12b-1 plan.³⁶

6. Redemption and Administrative Fees

Revised proposed rule 11a-3 would permit the imposition of a redemption fee and an administrative fee at the time of an exchange. The revised proposed rule would define both "redemption fee" and "administrative fee," and would require that each be uniformly applied to all offerees of the class specified.³⁷

The commenters devoted considerable attention to the provisions of the original proposal dealing with redemption fees and administrative

³⁵ See, e.g., *The Equitable Funds, et al., Investment Company Act Rel. Nos. 15931* (Aug. 14, 1987) [52 FR 31460, Aug. 20, 1987] (notice of application) and 15968 (Sept. 8, 1987) (order). But see *EBI Series Trust, et al., Investment Company Act Rel. No. 16239* (Jan. 28, 1988) [53 FR 3097, Feb. 3, 1988] (notice of application) and 16283 (Feb. 23, 1988) (order) (tolling where acquired fund has no 12b-1 plan). The orders issued after the proposal of rule 11a-3 that permit tolling are conditioned on compliance with rule 11a-3, when and if adopted. If the tolling provision is adopted as set out in the revised proposal, then funds relying on these orders would have to limit tolling in the manner described in the rule. Also, the holder of any order issued prior to proposed rule 11a-3 that permitted tolling in a manner other than that permitted in final rule 11a-3 would also have to comply with the final rule. See notes 12-14, *supra*, and accompanying text.

³⁶ Until the rule is adopted in final form, applications for approval under section 11(a) that include tolling provisions will be processed and granted by delegated authority only if the acquired security is not subject to a 12b-1 plan. Additionally, these and other section 11(a) applications will be conditioned on the terms of the exchange offer being conformed to the requirements of rule 11a-3, when adopted in final form.

³⁷ Paragraph (c)(1) of the revised proposed rule defines "administrative fee" and paragraph (c)(5) defines "redemption fee".

fees.³⁸ Specifically, three commenters objected to the provision in proposed rule 11a-3 that would have prohibited the imposition of a redemption fee on the exchanged security.³⁹ That provision had been based on the Commission's understanding that a portion of the administrative fee typically charged on exchanges is used to reimburse the fund from which a shareholder exchanges for the cost incurred by the fund in redeeming the exchanged shares.⁴⁰ However, commenters maintained that the nominal administrative fee permitted by the proposed rule would be insufficient to both cover the administrative costs of the exchange and reimburse the fund and the shareholders remaining in the fund after an exchange for the costs of redeeming the exchanged shares.

An exchange can, for some purposes, be characterized as a redemption of one fund's shares and a purchase of another fund's shares. There is some merit to the argument that where a fund ordinarily imposes a redemption fee to cover the costs of redeeming fund shares, no distinction should be made between redemptions pursuant to an offer of exchange and other redemptions. Therefore, revised proposed rule 11a-3 would permit the imposition of a redemption fee or any scheduled variation thereof on the exchanged security if the fund otherwise imposes such a fee on redemptions of fund shares.⁴¹ The revised proposed rule would define a "redemption fee" as any fee that is paid to the fund and is reasonably intended⁴² to compensate the fund for its expenses incident to redemption of fund shares.⁴³

³⁸ Four of the five comment letters received by the Commission on proposed rule 11a-3 discussed the administrative and redemption fee provisions.

³⁹ See paragraph (a)(4) of proposed rule 11a-3.

⁴⁰ At least one recipient of a section 11 order represented in its application that the administrative fee imposed would defray the costs of redeeming the exchanged security. See File No. 812-6227 (amended application of Principal World Fund, Inc., et al.); see also Investment Company Act Rel. Nos. 15018 (Mar. 27, 1986) [51 FR 11361, Apr. 2, 1986] (notice of application) and 15071 (Apr. 24, 1986) (order).

⁴¹ The revised version of the proposed rule would prohibit specifically the imposition of any redemption fee on the exchanged security that would exceed the redemption fee applicable to a redemption in the absence of an exchange. See discussion of the disclosure requirement for redemption fees at notes 48-49, *infra*, and accompanying text.

⁴² It should be noted that the proposed definition of "redemption fee" would not require that such fees equal precisely the costs of redeeming fund shares.

⁴³ When fund shares are redeemed, the fund may incur certain costs, such as brokerage expenses, in liquidating sufficient fund assets to pay the redeeming shareholder his proportionate share of fund assets. To prevent the burden of these costs

Revised proposed rule 11a-3 also defines "redemption fee" to be any fee other than a sales load (as defined in section 2(a)(35) of the Act) or deferred sales load (as defined in paragraph (c)(2) of the rule). This definition has been included in the revised proposed rule in response to certain comments received on proposed rule 11a-3. Those comments referred to "redemption fees" that are used to pay for distribution activities.⁴⁴

It is axiomatic that fund charges should be clearly disclosed and properly labelled. If a fee is charged upon redemption and is paid to a fund to offset the costs of redeeming fund shares, that charge is a redemption fee. On the other hand, if a fee is charged upon redemption, but is paid to the fund's principal underwriter to cover fund distribution expenses, that fee is a deferred sales load.⁴⁵

For the reasons just discussed, the revised proposal would also exclude sales loads and deferred sales loads from the rule's definition of "administrative fee." In addition, the definition would exclude redemption fees. This exclusion reflects the view of

from being borne by those fund shareholders that continue to hold their shares, many funds have imposed redemption fees. Such fees are typically paid by a redeeming shareholder to the fund itself.

The imposition of any charge or fee upon the redemption of fund shares raises serious questions because the shareholder's right of redemption is fundamental to the concept of an open-end investment company. A fee payable upon redemption may take the securities issued by the fund outside the definition of a "redeemable security" in section 2(a)(32) of the Act [15 U.S.C. 80a-2(a)(32)]. That section requires that the holder of such securities be entitled to receive "approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof." The staff of the Division of Investment Management, however, has taken the position that it would not consider redemption fees to violate section 2(a)(32) of the Act if the fees do not exceed two percent of the value of the shares redeemed. See John P. Reilly (pub. avail. July 12, 1979).

⁴⁴ Such fees would fall within the revised proposal's definition of "deferred sales load" and would be treated as such.

⁴⁵ As noted above, revised proposed rule 11a-3(a)(4) would not permit the imposition of a deferred sales load on the exchanged security at the time of an exchange.

The Commission has required funds wishing to impose deferred sales loads, specifically CDSLs, to obtain exemptive relief from sections 2(a)(32), 2(a)(35), and 22(c) of the Act and from rule 22c-1 thereunder. See, e.g., E.F. Hutton Investment Services, Inc. Investment Company Act Rel. Nos. 12079 (Dec. 4, 1981) [46 FR 60703, Dec. 11, 1981] (notice of application) and 12135 (Jan. 4, 1982) (order); Freedom Investment Trust, Investment Company Act Rel. Nos. 14707 (Sept. 5, 1985) [50 FR 37103, Sept. 11, 1985] (notice of application) and 14742 (Sept. 30, 1985) (order). It should also be noted that a fund that imposes any deferred sales load may not hold itself out as a "no-load" fund. See Investment Company Act Rel. No. 13408 (Feb. 28, 1983) [48 FR 9532, Mar. 7, 1983] (proposal of rule 6c-8 under the Act) at n.6.

the Commission that the costs covered by an administrative fee and those covered by a redemption fee should be mutually exclusive. This distinction is intended to prevent an exchanging shareholder from being charged twice for the same expenses.

There was no definition of "administrative fee" in the original proposal. The proposal would have permitted the imposition of a "nominal administrative fee" at the time of an exchange, but did not define that term. One commenter stated that the meaning of "nominal administrative fee" was unclear. Also, the term "nominal administrative fee" could have been interpreted to mean any "stated" amount. This might have led to very large charges upon exchanges which, in turn, would have created the incentives for switching with which section 11 is concerned. Therefore, the Commission has decided to define clearly the extent of a permissible administrative fee in the revised proposed rule.

The revised proposal would define "administrative fee" to mean any fee reasonably intended to cover the costs incurred in connection with exchanges. For example, that standard could be satisfied if the fee schedule is unlikely to result in the average investor paying more than the actual cost of an exchange incurred by the transfer agent.⁴⁶ Alternatively, the revised proposed rule would permit an administrative fee that is "nominal," as that term is most commonly understood.⁴⁷ Thus, the nominal standard is intended to minimize any incentive for switching and should be construed accordingly.

7. Disclosure and Advertising

As revised, proposed rule 11a-3 would require that the prospectus of the offering company disclose the amount of any administrative fee that would be imposed on an exchange.⁴⁸ The revised

⁴⁶ Paragraph (c)(1)(i) of the revised proposal contains a requirement that those offering companies that impose an administrative fee based on a cost standard maintain and preserve records of any determination of the costs incurred in connection with an exchange.

⁴⁷ The Division of Investment Management has stated that it would not recommend enforcement action to the Commission if a fund offered a no-load exchange privilege subject only to an administrative fee not exceeding \$5.00. See Chase Fund of Boston (pub. avail. July 28, 1980). The Chase Fund of Boston letter should not be construed to cover any fee exceeding \$5.00. The Commission, consistent with that position, would consider any fee not exceeding \$5.00 (or more, as adjusted for inflation) to be "nominal."

⁴⁸ Since the amount of any redemption fee imposed on shares being exchanged would be

Continued

proposed rule would also require that any sales literature that mentions the existence of the exchange offer also disclose the *amount* of any administrative fee or redemption fee that would be imposed at the time of an exchange. In addition, the revised proposed rule would require that any advertising that mentions the existence of the exchange privilege also disclose the *existence* of any administrative fee or redemption fee that would be imposed on an exchange. If an offering company reserves the right to change the terms of or terminate an exchange offer, revised proposed rule 11a-3 would also require disclosure of that fact in the prospectus of the offering company and in any sales literature and advertising that mentions the existence of the exchange offer.

Proposed rule 11a-3 would have simply required disclosure of any administrative fee in the prospectus of the offering company and in any sales literature or advertising that described the exchange offer. One commenter expressly supported the administrative fee disclosure provisions of the proposed rule. Another commenter maintained that, if an administrative fee is "nominal", funds should not be required to disclose either the existence or the amount of the fee in their advertising and sales literature.⁴⁹ However, that commenter also stated that, if the proposed disclosure requirements are retained, the Commission should clarify that it is enough to include *either* the existence or the amount of the fee in advertising and sales literature. A third commenter asked that the final version of the rule clarify whether advertising and sales literature would have to disclose the amount of any administrative fee, or merely the existence of such a fee.⁵⁰

disclosed in the prospectus of the fund that issued the exchange security, it appears unnecessary to require such disclosure also in the prospectus of the offering company.

It should be noted that the Commission has recently amended Form N-1A, the registration form for mutual funds, to require that all fund expenses, including sales loads, redemption fees and administrative fees, be included in a table located near the front of the prospectus (the "fee table"). See Investment Company Act Rel. No. 16244 (Feb. 1, 1988) [53 FR 3192, Feb. 4, 1988]. Of course, any fee or load imposed at the time of an exchange must be disclosed in the fee table.

⁴⁹ The commenter suggested that, rather than require disclosure of any administrative fee, the adopting release should only suggest that the issue of whether to disclose a certain fee should be considered by funds and the National Association of Securities Dealers ("NASD") in its review of fund advertising. See NASD Rules of Fair Practice, sections 35 (c) and (e).

⁵⁰ Any offer of exchange subject only to an administrative fee (and not to any sales loads) would still be required to comply with proposed rule

The existence of an exchange offer may be an important factor in an investor's decision to purchase fund shares. Therefore, the prospectus of the offering company and any advertisement or sales literature that mentions the existence of an exchange offer should include disclosure regarding the administrative or redemption fees that will be imposed at the time of an exchange.

The Commission has drafted revised proposed rule 11a-3 to require that the *amount* of any administrative fee be disclosed in the prospectus of the offering company. In addition, unlike the original proposal, the revised proposal would require that any sales literature that mentions the existence of an exchange offer also disclose the amount of any administrative fee or redemption fee that would be imposed at the time of an exchange. The revised proposal also would require that any advertising that mentions the existence of the exchange offer also disclose the *existence* of any administrative fee or redemption fee that would be imposed at the time of an exchange. Disclosure in advertising and sales literature that charges may be imposed at the time of an exchange should put an investor on notice. If the investor wants additional information regarding such charges before deciding whether to purchase fund shares, that information would be available in the prospectus of the offering company or in the prospectus of the issuer of the exchanged security.

Finally, unlike the original proposal, the revised proposal also would require that, where an offering company reserves the right to change the terms of or terminate its exchange offer, the prospectus of the offering company and any sales literature or advertising that mentions the existence of the exchange offer also disclose that the exchange offer is *subject to termination* and that its terms are subject to change. This

provision is intended to put prospective shareholders on notice that an exchange offer can be terminated or its terms changed.

8. Offerees

Any fund that can rely on the revised proposed rule would be permitted to make an exchange offer to a shareholder of that fund⁵¹ or of another fund within the same group of investment companies. Paragraph (c)(4) of the revised proposed rule would define "group of investment companies" to mean any two or more funds that have a common investment adviser or principal underwriter, or whose investment advisers or principal underwriters are under common control, and that hold themselves out to investors as related funds for purposes of investment and investor services.

The provisions of the revised proposal relating to the scope of the offerees of an exchange offer are identical to those included in the rule as initially proposed, with one significant exception. The proposed rule would have defined the term "family of investment companies" to include only two or more registered open-end investment companies that have the same investment adviser or principal underwriter and that hold themselves out as related companies for purposes of investment and investor services. This definition was based on the "family of investment companies" concept used in

⁵¹ By allowing exchange offers to be made to other shareholders within the offering company, the revised proposed rule is intended to cover exchanges between series of the same company. The Commission has granted several orders under section 11 involving series companies. See, e.g., Industrial Series Trust, Investment Company Act Rel. Nos. 15043 (Apr. 7, 1986) [51 FR 12755, Apr. 15, 1986] (order); Shearson Lehman Special Portfolios, Investment Company Act Rel. Nos. 14957 (Feb. 25, 1986) [51 FR 7510, Mar. 4, 1986] (notice of application) and 15005 (Mar. 19, 1986) (order). The Commission finds no reason to distinguish between a group of investment companies and separate series of a single investment company with respect to exchange offers. See discussion of former section 11(b)(2) in the proposing release at note 3. It should be noted that the Commission has treated the separate series of a series fund as separate investment companies for purposes of applying other rules under the Act. The theory behind this treatment is that, for all practical purposes, the individual series of a series fund are separate investment companies, each with a different group of shareholders holding interests in a segregated portfolio. See, e.g., Investment Company Act Rel. No. 16431 (June 13, 1988) [53 FR 23258, June 21, 1988] (proposal of amendments to rule 12b-1 under the Act) at nn.202-206; Investment Company Act Rel. No. 14036 (July 13, 1984) [49 FR 29362, July 20, 1984] (adopting release for revision of rule 12d3-1 under the Act [17 CFR 270.12d3-1]); Investment Company Act Rel. No. 11676 (Mar. 10, 1981) [46 FR 17011, Mar. 17, 1981] (adopting release for amendment to rule 17a-7 under the Act [17 CFR 270.17a-7]) at n.1.

11a-3. Some funds that make exchange offers with an administrative fee have not obtained individual orders, apparently in reliance on the position taken by the staff of the Division of Investment Management in the Chase Fund of Boston letter. See note 47, *supra*. However, the staff's position was not intended as a statement of Commission policy or as an interpretation of section 11. Because revised proposed rule 11a-3 would permit funds to make offers of exchange without obtaining individual orders, the Commission sees no reason to continue the distinction drawn in the Chase Fund of Boston letter. Therefore, after the effective date of rule 11a-3, the Chase Fund of Boston letter will be withdrawn and funds relying on that letter (or other funds with a no-load offer of exchange subject to an administrative fee) will be required to bring their exchange offer arrangements into compliance with the provisions of the rule. Before rule 11a-3 becomes effective, however, a fund can rely on the Chase Fund of Boston letter only if it imposes an administrative fee of no more than \$5.00.

Form N-SAR [17 CFR 274.101], the periodic reporting form for registered investment companies.⁵² Two commenters argued that the Commission should broaden the scope of the rule beyond the N-SAR family of fund concept. Specifically, one commenter called for amending the definition of "family of investment companies" to include companies with affiliated investment advisers or principal underwriters.⁵³

In response to the comments received, and in light of several orders that have been granted permitting offers of exchange between funds that do not have the same investment adviser or principal underwriter,⁵⁴ the revised proposal has been modified to permit a broader scope of offerees. Specifically, the revised proposed rule would permit exchange offers to shareholders of other funds in the same "group of investment companies." This term, which has been changed from the proposal to avoid confusion with the "family" of investment companies concept in Form N-SAR, would be defined to include two or more funds whose investment advisers or principal underwriters are under common control,⁵⁵ and that hold themselves out as related companies for purposes of investment and investor services.⁵⁶

While the revised proposed rule does not broaden the scope of permissible offerees to the extent advocated by one of the commenters, it would cover the vast majority of the applications that have been received and granted to date. Given the relative inexperience of the Commission and staff in dealing with exchange offers that fall outside the umbrella of common control embodied in the revised proposal, the Commission believes such exchange offers should continue to be dealt with on a case-by-case basis in the context of individual applications for approval of exchange offers.

9. Minimum Holding Period

Paragraph (b) of revised proposed rule 11a-3 would permit the offering company to require an exchanging shareholder to have held the exchanged security for a minimum period of time where either no sales load is imposed on the acquired security or the sales load imposed is less than the sales load differential. While this provision is identical to that originally proposed, the Commission specifically requested comment in the proposing release on whether rule 11a-3 should require a minimum holding period. Two commenters supported keeping the minimum holding period permissive, and two other commenters suggested deleting the entire provision. The Commission believes that the decision to establish a minimum holding period is better left to the business judgment of the offering company. However, the Commission also believes that, to avoid confusion, the permissive holding period provision should remain part of the rule text.⁵⁷

10. Amending the Terms of an Exchange Offer

Some fund families that offer investors liberal exchange privileges may experience heavy switching.⁵⁸ Because exchanges, like other redemptions, may require that fund assets be liquidated, less active investors could be unfairly burdened with the costs, including brokerage fees, that heavy switching may cause. Additionally, a large volume of exchanges may make it more difficult for the portfolio manager of a fund to maintain both a targeted investment strategy and sufficient liquidity to meet anticipated redemptions.

While exchange privilege provide investors with desirable flexibility, the board of directors of each fund should monitor carefully the fund's involvement in such a privilege for any detrimental effect on the fund's portfolio and shareholders who remain in the fund. If

the board decides that it should limit or discourage the use of an exchange privilege, directors should consider options that would minimize any harmful consequences of an exchange privilege. Directors also should consider questions of fairness to shareholders who may have bought fund shares in reliance on the existing exchange privilege.

Some funds have already amended the terms of their exchange offers and the Commission anticipates more will do so.⁵⁹ Although such amendments, as just discussed, may be advisable, they may raise questions of fairness to those shareholders who may have bought (or be holding) shares of a particular fund based in part on an existing exchange privilege.⁶⁰ Therefore, paragraph (a)(10) of the revised proposed rule would require that prominent notice of any material change⁶¹ be given to any holder of a security subject to the exchange offer at least sixty days prior to the effective date of the change.⁶² Shareholders would, therefore, be given sixty days before the effective date of the change in which to make one or more exchanges under the terms then in effect or to redeem their shares altogether.⁶³ The Commission also

⁵² See, e.g., *Some Funds Act To Discourage Phone Switches*, Wall St. J., Feb. 8, 1988 at 27 col. 3; *Fidelity Curb Switching in Sector Funds*, Wall St. J., Apr. 13, 1987 at 45 col. 1; *The Itch to Switch*, Financial World, Feb. 24, 1987 at 35.

⁵³ As discussed above, these fairness questions would also be addressed by providing that any offering company that had previously made an offer of exchange could not rely on the rule to amend the terms of such prior offer unless that fund had made certain prospectus disclosure (see notes 15-18, *supra*, and accompanying text), and by requiring specific advertising, sales literature and prospectus disclosure whenever a fund relying on the rule reserves the right to change or terminate an exchange offer. See notes 48-50, *supra*, and accompanying text.

⁵⁴ Paragraph (a)(10) would provide an exemption from the notice requirement where the only material effect of an amendment would be to reduce or eliminate an administrative fee, sales load or redemption fee that would be payable at the time of an exchange. Because such an amendment would clearly benefit existing shareholders, prior notice is considered to be unnecessary.

⁵⁵ The notice period would be deemed to run from the date notice of the change is mailed or otherwise delivered to the shareholders. The Commission anticipates that the costs of giving such notice would be borne by the fund's principal underwriter or investment adviser.

⁵⁶ Under this provision, any person who owns shares sixty days before the effective date of the change in terms, as well as any person who becomes a shareholder within that sixty day period, would be able to make one or more exchanges, or redeem altogether, under the terms then in effect.

⁵² See Form N-SAR, General Instructions, Part G.

⁵³ The commenter analogized to rule 17a-7 under the Act, which exempts from section 17(a) of the Act [15 U.S.C. 80a-17(a)] certain purchase or sale transactions between an investment company and certain affiliated persons thereof.

⁵⁴ See, e.g., *The Equitable Funds, et al., Investment Company Act Rel. Nos. 15831* (Aug. 14, 1987) [52 FR 31460, Aug. 20, 1987] (notice of application) and 15968 (Sept. 8, 1987) (order).

⁵⁵ For example, if one fund's investment adviser is under common control with another fund's principal underwriter, the two funds would be considered to be part of the same group of investment companies. See section 2(a)(9) under the Act [15 U.S.C. 80a-2(a)(9)] for the definition of "control."

⁵⁶ We note that the "holding out" portion of this definition would likely be satisfied whenever two or more funds provide jointly services to shareholders in addition to an exchange privilege.

⁵⁷ One commenter suggested that the final rule include a provision stating that an offer of exchange made under rule 11a-3 may include other conditions that are not inconsistent with the provisions of the rule. The Commission believes that such a provision is neither necessary nor appropriate.

⁵⁸ See, e.g., *Fidelity Investments Keeps It in Family During Crash*, Wall St. J., Oct. 23, 1987, at 6, col. 1; *Fidelity Sector Funds Sustain Big Hits*, Wall St. J., Oct. 23, 1987 at 45, col. 1. Many of the exchanges that occur within fund families result from the advice given by market timing newsletter and services. Recommendations by such services can result in a large number of investors exercising an exchange privilege simultaneously. See, e.g., *Market Timing Services Enter Bond Field*, Wall St. J., May 1, 1987 at 36, col. 3; *Funds Keeping It in the Family*, N.Y. Times, Sept. 16, 1986, at C4, col. 2.

requests specific comment on whether the final version of rule 11a-3 should also require that where a fund is to amend materially or discontinue an exchange privilege, it must allow shareholders sixty days to redeem out of the fund without the imposition of any CDSL or redemption fee that would otherwise be imposed and to receive a refund of any front-end sales load previously paid.

Paragraph (a)(10) is intended to prevent any unfairness that may arise should a fund change the terms of its exchange privilege long after shareholders have purchased shares in reliance on the prior terms of the exchange privilege.⁶⁴ The cautionary effect of any disclosure concerning the possibility of change would fade over time, while the shareholder may be investing additional amounts in the fund.

B. Proposed Rule 11c-1

1. The Proposal

Proposed rule 11c-1 would have permitted a registered UIT or its sponsor (collectively, "the offering trust") to make an exchange offer without prior Commission approval to unitholders of the same UIT or to unitholders of another UIT having the same sponsor, provided certain conditions were met. Rather than simply codifying the existing orders, which typically permit offering trusts to impose a fixed "reduced sales charge" of \$15 per unit (or about 1.5% of the public offering price) on each exchange,⁶⁵ proposed rule 11c-1 would have permitted an offering trust to charge a sales load on the acquired unit no greater than the excess, if any, of the sales load applicable to the acquired unit in the absence of an exchange over any sales

load previously paid on the exchange unit. Additionally, although proposed rule 11c-1 would not have permitted the imposition of an administrative fee at the time of an exchange, the proposing release specifically sought comment on whether the final version of the rule should include an administrative fee provision. Finally, the proposing release specifically sought comment on whether the final version of the rule should extend approval to exchange offers made to holders of units that have a different sponsor.⁶⁶

2. Commenter Criticism of Proposed Rule 11c-1

While the commenters supported in principal the Commission's attempt to formulate a rule covering UIT exchange offers, two commenters criticized the use of the sales load differential approach as a departure from the existing orders and as unworkable. Specifically, the commenters argued that the proposal would seldom permit the imposition of a sales load on exchanges because most exchanges occur between series with the same sales load rate. Also, one commenter asserted that an offering trust would often be unable to determine the sales load previously paid on an exchanged unit. According to the commenter, the difficulty in tracking the sales loads previously paid over a series of exchanges relates to the fact that units may be sold by and purchased from someone other than the sponsor, and transfer agents generally do not maintain data on sales loads paid by unitholders.

The commenters also claimed that a sales load differential would not compensate sponsors for the expense and the risk of maintaining a secondary market for units.⁶⁷ Moreover, it was argued that the differential would not compensate the registered representatives who continually assess the financial and tax position of unitholders. Two commenters stated that, even if the final version of the rule permitted the imposition of an administrative fee at the time of an exchange, as in proposed rule 11a-3, the proceeds from that fee would be inadequate to defray the costs of an exchange option. In sum, the commenters maintained that, under the proposed sales load differential provision, exchange privileges would be uneconomical to offer. Therefore, UITs

would either not have exchange privileges or would continue to apply for an order to charge a fixed reduced sales load on exchanges.

Regarding the scope of permissible offerees under proposed rule 11c-1, one commenter stated that there was no policy reason for the limitations included in the proposed rule, and asked that the Commission reconsider its position.⁶⁸ A second commenter believed that the rule should be expanded to cover exchanges between UITs that do not have a common sponsor and exchanges from mutual funds to UITs.⁶⁹

As discussed in the proposing release, the Commission has issued six orders permitting, under certain conditions, applicants to make a type of exchange offer known as a "conversion offer" to holders of units that have a different sponsor.⁷⁰ Because there have been few applications involving conversion offers, there is no need at this time to include such offers in a generic rule. In addition, with limited experience in processing applications involving exchanges between mutual funds and UITs, the Commission believes that it would be inappropriate to include such exchanges within the coverage of proposed rule 11c-1.⁷¹

3. Suggested Alternatives to Proposed Rule 11c-1

The commenters suggested two alternative approaches to the sales load differential provisions of proposed rule 11c-1: (i) codify the existing orders, permitting the imposition of a fixed "reduced sales load"; or (ii) permit the imposition of a sales load at the time of an exchange if it is less than the sales load that would be imposed on a direct

⁶⁴ The notice requirement of paragraph (a)(10) would also apply to the situation where a fund that currently makes an offer of exchange intends to amend the terms of the exchange offer in such a way that after the amendment, it will need to rely on rule 11a-3. In such a case, the fund would be required to comply with the rule's notice and other requirements. This assumes that the fund had made the necessary prospectus disclosure; otherwise, it would need an order.

Of course, any material change in the terms of an exchange offer would also be a material event requiring the amendment of a fund's registration statement or a supplement to the prospectus. See rules 485 [17 CFR 230.485] and 497(d) [17 CFR 230.497(d)] under the Securities Act of 1933 [15 U.S.C. 77a et seq.]. Similarly, it would be misleading for a fund's advertising and sales literature to continue to describe the terms of an exchange offer once the decision to amend those terms has been made. See section 34(b) of the Act [15 U.S.C. 80a-34(b)].

⁶⁵ See, e.g., Dean Witter Reynolds Inc., et al., Investment Company Act Rel. Nos. 13654 (Dec. 2, 1983) [48 FR 55224, Dec. 9, 1983] (Notice of application) and 13702 (Jan. 6, 1984) (order).

⁶⁶ See proposing release at note 33.

⁶⁷ It should be noted that sponsors are not required to maintain a secondary market for their units, but do so to offer a more attractive product to investors and to avoid redemptions that could cause a trust to shrink in size.

⁶⁸ Proposed rule 11c-1 would allow a registered UIT or its sponsor to make an exchange offer to unitholders of the same trust or to unitholders of a UIT having the same sponsor. The commenter did not explain why the scope of the rule should be extended or state what additional offerees should be included.

The Commission seeks comment on whether it is necessary for rule 11c-1 to cover exchange offers made to unitholders of the same series as the offering trust.

⁶⁹ Beyond referring to the prior orders, the commenter did not suggest any conditions for a rule to cover such exchanges.

⁷⁰ See e.g., Dean Witter Reynolds, Inc., et al., Investment Company Act Rel. Nos. 14934 (Feb. 2, 1986) [51 FR 6058, Feb. 19, 1986] (notice of application) and 14987 (Mar. 13, 1986) (order); Merrill Lynch, Pierce, Fenner & Smith Inc., et al., Investment Company Act Rel. Nos. 14684 (Aug. 19, 1985) [50 FR 34563, Aug. 26, 1985] (notice of application) and 14717 (Sept. 12, 1985) (order).

⁷¹ The Commission will continue to process applications involving proposed exchanges between UITs and open-end companies and monitor the need for a rule to cover such exchanges.

purchase of the acquired unit. For the reasons stated below, neither of these alternatives is acceptable.

With respect to codification of the prior orders, the Commission notes that such orders have been granted on a case-by-case basis and permit fixed levels of sales loads at the time of an exchange.⁷² The level of the fixed sales load in each case has been established by the applicant as part of a specific representation made in the application for an order. Codification of these orders would require the Commission to establish a maximum allowable sales load that could be charged at the time of an exchange. Consequently, the Commission would prefer not to codify the prior orders in a rule in this area.⁷³

The second suggested approach, *i.e.* that the rule permit the imposition of any sales load that is less than the sales load applicable to a direct purchase of the acquired unit, is even less acceptable. The commenter that suggested this approach stated that the sponsor would set the amount of the reduced load to reflect the savings in selling costs on exchanges. The commenter argued that such an approach would provide the greatest flexibility, consistent with rule 22d-1 under the Act [17 CFR 270.22d-1],⁷⁴ to allow the marketplace to determine the appropriate sales load structure. Moreover, the commenter believed that the suitability requirements of the Rules of Fair Practice of the National Association of Securities Dealers (NASD)⁷⁵ have minimized the danger of a sales representative switching an investor between trusts for the primary purpose of exacting additional sales loads.

The arguments made by the commenter in support of the second alternative do not warrant including the suggested provision in proposed rule 11c-1. The legislative history of section 11(c) reflects a strong Congressional judgment that UIT investors are particularly vulnerable to switching

abuses.⁷⁶ Section 11(c) of the Act was enacted to address these abuses by requiring that any exchange offer involving the securities of a UIT, including exchanges at relative net asset value, receive prior Commission approval or comply with rules adopted by the Commission. In light of the specific intent behind section 11(c), the Commission can grant an order or adopt a rule permitting UIT exchange offers only if the order or rule specifically addresses, and seeks to prevent, the switching abuses detailed in the legislative history. Consequently, the second alternative must be assessed on the basis of whether it would include appropriate safeguards to minimize effectively the financial incentive to switch investors or otherwise address the Congressional concerns that led to the adoption of section 11(c).

The only safeguard suggested by the commenter was that the amount of the sales load charged at the time of an exchange could be required to "reflect a reasonable estimate of the savings in selling costs for exchange transactions, similar to the provisions of rule 22d-1(f) before it was amended."⁷⁷ This restriction would not provide an effective means of reducing the financial incentive to switch investors among UITs. The standard embodied in former rule 22d-1(f) was designed to provide funds with a degree of flexibility to charge a lower sales load to particular classes of investors, and was deemed to address adequately the Congressional concerns that had led to the inclusion of section 22(d) in the Act [15 U.S.C. 80a-22(d)]. However, the rule 22d-1(f) standard would do little to minimize the risk of switching abuses because it would permit the level of the sales load to be established by the sponsor of the UIT, who would be an interested party and potential recipient of the sales load proceeds. Consequently, rather than providing a protection against switching abuses, the suggested alternative would place decisions as to the appropriate level of sales load to be imposed on an exchange in the hands of the party that

has historically borne responsibility for the abuses that led to the enactment of section 11.⁷⁸

The support of the second alternative, the commenter also argued that the switching abuses that led to the enactment of section 11(c) "have long since been minimized by the NASD Rules of Fair Practice." The Commission acknowledges that switching abuses could place a broker-dealer that is a member of the NASD in violation of the NASD's suitability requirements, and that those requirements may therefore deter such persons from engaging in switching.⁷⁹ However, the existence of the NASD rules does not reduce the potential for abuse in this area to the point where a rule under section 11(c) does not need to include provisions designed to minimize the risk of abuse.

4. Request for Comment

In light of (i) the commenters' beliefs that proposed rule 11c-1 fails to provide for adequate compensation of sponsors for maintaining a secondary market, (ii), the constraints of section 11, and (iii) the problems presented by the alternative approaches suggested by the commenters, the Commission has decided not to take further action on proposed rule 11c-1 at this time.⁸⁰ Instead, the Commission is requesting additional public comment on how to proceed in the area of offers of exchange involving UITs. Specifically, the Commission seeks comment on the following:

(i) If the Commission should go forward with rule 11c-1, whether a sales load provision can be drafted both to minimize the problems that led to the adoption of section 11(c) and to provide for adequate compensation to sponsors

⁷² The Commission has permitted holders of orders to impose a reduced sales load so that sponsors can be compensated for secondary market activities and, in part, because the additional sales load that was requested, \$15 per \$1,000 unit exchanged was a relatively small amount.

⁷³ For example, applicants have typically represented that a "reduced sales load" permits a sponsor to pass on to a unitholder the cost savings resulting from reductions in time and expense related to advice, financial planning and operational expense required to sell the units acquired under an exchange privilege.

⁷⁴ Rule 22d-1 permits the sale of investment company securities at prices that reflect scheduled variations in, or elimination of, the sales load.

⁷⁵ See NASD Rules of Fair Practice, Article III, § 2.

⁷⁶ See S. Rep. 1775, 76th Cong., 3d Sess., 7-8 (1940); Investment Trust Study, "Fixed and Semifixed Investment Trusts", 181-82, 209-30 and Appendix Q (1940).

⁷⁷ Rule 22d-1 was amended in Investment Company Act Rel. No. 14390 (Feb 22, 1985) [50 FR 7909, Feb. 27, 1985]. Prior to the amendment of the rule, paragraph (f) provided an exemption from section 22(d) of the Act to permit reduction or elimination of a sales load with respect to a sale of redeemable securities to, *inter alia*, employee benefit plans not qualified under section 401 of the Internal Revenue Code, as long as the non-qualified plans satisfied uniform criteria relating to the realization of economies of scale on sales effort and sales related expense selected by the issuer and described in the prospectus.

⁷⁸ The commenter that suggested this approach also stated that the level of sales load would be governed by market forces. None of the commenters presented empirical data to the Commission on the existence of retail price competition in the UIT industry. It should be noted that the redeemable securities of a UIT are subject to the retail price maintenance provisions of section 22(d), which may prevent the development of effective retail price competition. See generally Report of the Securities and Exchange Commission on the Public Policy Implications of Investment Company Growth, H.R. Rep. No. 2337, 89th Cong., 2d Sess., at 208-09, 218-21 (1966). In any event, the commenter's argument still ignores the history of section 11(c).

⁷⁹ Art. III, section 2 of the NASD Rules of Fair Practice states:

In recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.

⁸⁰ The Commission will, of course, continue to process applications under section 11 for exchange offers involving UITs.

for the costs of maintaining a secondary market;

(ii) If the Commission should go forward with rule 11c-1, whether the rule should include provisions such as those included in revised proposed rule 11a-3;⁸¹ and

(iii) Whether a rule relating to UIT exchange offers is impracticable and the Commission should simply continue to consider applications on a case by case basis.

C. Request for Comment on Rule 11a-2.

In light of revised proposed rule 11a-3, the Commission believes that it is appropriate to reexamine the provisions of rule 11a-2 to determine whether there are reasons to distinguish between mutual funds and insurance company separate accounts in the exchange offer area. As a matter of general policy, separate accounts should be subject to the same requirements as mutual funds, absent a compelling need under the Act arising from the special nature of the insurance product.⁸² The Commission will consider whether to propose amendments to rule 11a-2 to provide that exchange offers by registered insurance company separate accounts are subject to the same or similar conditions as exchange offers by mutual funds. Therefore, the Commission requests comment relating to the possible proposal of amendments to rule 11a-2 to better protect separate account investors and facilities competitive equality among investment company products in the exchange offer area. Specifically, commenters focus on whether there are insurance or other considerations that may make it inappropriate for any other provisions of revised proposed rule 11a-3 to be incorporated into rule 11a-2. The Commission will, of course, consider all comments and suggestions in developing any rule proposal in this area.

Cost Benefit of Proposed Action

Revised proposed rule 11a-3 would not impose any significant additional burdens on mutual funds and would reduce the costs that they would incur by eliminating the need to file many applications. Mutual funds, advising or principal underwriters may incur some

costs in complying with the disclosure and notice provisions of the revised proposed rule. The costs related to the notice requirement could be minimized by simply including the notice on a separate document with one of the mailings to shareholders that funds make to comply with the federal securities and the rules thereunder, or for other purposes. The revised proposed rule will also require offering companies that impose administrative fees on exchanges based on a cost standard to maintain records with respect to the actual costs incurred in connection with exchanges. The Commission would benefit from the revised proposal because its staff would have to review few applications requesting orders in this area. Comments are requested, however, on these matters and on the costs or benefits of any other aspect of the proposed action.

Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding revised proposed rule 11a-3. The Analysis explains that revised proposed rule 11a-3 would permit certain offers of exchange between mutual funds. It states that the revised proposed rule is intended to protect investors from the abuses that led to the enactment of section 11, and to reduce significantly the number of applications filed with the Commission regarding exchange offers. The Analysis indicates that the revised proposed rule contains no reporting requirements. The revised proposed rule would require any offering company that imposes an administrative fee on an exchange based on a cost standard, to maintain records with respect to the actual costs incurred in connection with its exchanges. Any offering company, however, that elected to impose no more than a nominal administrative fee would be free of the recordkeeping requirement. The revised proposed rule would require prospectus, advertising and sales literature disclosure regarding any charges imposed at the time of an exchange and notice to shareholders if the terms of an exchange offer are to be amended materially. These disclosures might impose costs on fund advisers or principal underwriters, although the additional disclosure required is minimal. However, such costs could be minimized by including the notice in a separate document with one of the mailings to shareholders that funds make to comply with the federal securities laws and the rules thereunder,

or for other purposes. To the extent that the proposed rule would eliminate the need for mutual funds to file applications seeking orders under section 11, it will reduce the costs incurred by smaller entities in preparing and filing applications. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Brian P. Kindelan, Esq., Mail Stop 5-2, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Paperwork Reduction Act

The notice information required by revised proposed rule 11a-3 has been submitted to the Office of Management and Budget.

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Reproposed Rule and Proposed Rule

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is proposed to be amended as shown.

1. The Authority citation for Part 270 continues to read as follows:

Authority: Secs. 38, 40, 54 Stat. 841, 842; 15 U.S.C. 80a-37, 80a-39; The Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 *et seq.*; unless otherwise noted. * * * Section 270.11a-3 is also issued under Secs. 6(c) [15 U.S.C. 80a-6(c)] and 11(a) [15 U.S.C. 80a-11(a)].

2. By adding § 270.11a-3 to read as follows:

§ 270.11a-3 Offers of exchange by open-end investment companies other than separate accounts.

(a) Notwithstanding section 11(a) of the Act [15 U.S.C. 80a-11(a)], a registered open-end investment company (other than a registered separate account) or any principal underwriter thereof (collectively, the "offering company") may, in connection with an offer to the holder of a security of that company or of another open-end investment company within the same group of investment companies as the offering company to exchange that security (the "exchanged security") for a security of the offering company (the "acquired security"), cause a securityholder to be charged a sales load on the acquired security, a redemption fee, or an administrative fee, or any combination of the foregoing. *Provided that:*

⁸¹ See, e.g., notes 48-50 and 61-64, *supra*, and accompanying text.

⁸² The Commission has stated that "[m]anagement investment companies funding variable insurance products should be subject to the same procedural requirements as other management investment companies, absent a compelling need under the Act for special regulation arising from the nature of the insurance product." Investment Company Act Rel. No. 15586 (Feb. 26, 1987) [52 FR 7166, Mar. 9, 1987] (reproposals of rule 26a-3 [17 CFR 220.26a-3]).

(1) Any offering company that has previously made an offer of exchange cannot rely on this section to amend such prior offer unless the offering company's prospectus had disclosed, at all times during which the prior offer was outstanding, that the offer was subject to termination and its terms were subject to change, *Provided that*: no such disclosure need have been given where the only effect of an amendment is to reduce or eliminate an administrative fee, sales load or redemption fee payable at the time of an exchange;

(2) Any administrative fee or scheduled variation thereof is applied uniformly to all offerees of the class specified;

(3) Any sales load charged with respect to the acquired security is a percentage that is no greater than the excess, if any, of the rate of the sales load applicable to that security in the absence of an exchange over the total rate of any sales loads previously paid on the exchanged security, *Provided that*: the percentage rate of any sales load charged when the acquired security is redeemed, that is solely the result of a deferred sales load imposed on the exchanged security, may be no greater than the excess, if any, of the applicable rate of such sales load, calculated in accordance with paragraph (a)(5) of this section, over the total rate of all sales loads previously paid on the acquired security;

(4) No deferred sales load is imposed on the exchanged security at the time of an exchange;

(5) Any deferred sales load charged at the time the acquired security is redeemed is calculated as if the holder of the acquired security had held that security from the date on which he became the holder of the exchanged security, *Provided that*: the time period during which the acquired security is held need not be included when the amount of the deferred sales load is calculated, if the deferred sales load is solely the result of a sales load imposed on the exchanged security, no other sales loads, including deferred sales loads, are imposed with respect to the acquired security, and the offering company does not have in effect a plan of distribution adopted in accordance with rule 12b-1 under the Act [17 CFR 270.12b-1];

(6) Any redemption fee charged with respect to the exchanged security or any scheduled variation thereof

(i) Is applied uniformly to all offerees of the class specified, and

(ii) Does not exceed the redemption fee applicable to a redemption of the

exchanged security in the absence of an exchange;

(7) The prospectus of the offering company discloses

(i) The amount of any administrative fee imposed on an exchange transaction for its securities, as well as the amount of any administrative fee imposed on its securityholders to acquire the securities of other investment companies in an exchange transaction, and

(ii) If the offering company reserves the right to change the terms of or terminate an exchange offer, that the exchange offer is subject to termination and its terms are subject to change;

(8) Any sales literature that mentions the existence of the exchange offer also discloses

(i) The amount of any administrative fee or redemption fee that would be imposed at the time of an exchange, and

(ii) If the offering company reserves the right to change the terms of or terminate the exchange offer, that the exchange offer is subject to termination and its terms are subject to change;

(9) Any advertising that mentions the existence of the exchange offer also discloses

(i) The existence of any administrative fee or redemption fee that would be imposed at the time of an exchange, and

(ii) If the offering company reserves the right to change the terms of or terminate the exchange offer, that the exchange offer is subject to termination and its terms are subject to change;

(10) Whenever an exchange offer is to be terminated or its terms are to be amended materially, any holder of a security subject to that offer shall be given prominent notice of the impending termination or amendment at least sixty days prior to the date of termination or the effective date of the amendment, *Provided that*: no such notice need be given where the only material effect of an amendment is to reduce or eliminate an administrative fee, sales load or redemption fee payable at the time of an exchange; and

(11) In calculating any sales load charged with respect to the acquired security:

(i) Where a securityholder exchanges less than all of his securities, the security upon which the highest sales load rate was previously paid its deemed exchanged first; and

(ii) Where the exchanged security was acquired through reinvestment of dividends or capital gains distributions, that security is deemed to have been solid with a sales load rate equal to the sales load rate previously paid on the security on which the dividend was paid or distribution made.

(b) Where either no sales load is imposed on the acquired security or the sales load imposed is less than the maximum allowed by paragraph (a)(3) of this section, the offering company may require the exchanging securityholder to have held the exchanged security for a minimum period of time previously established by the offering company and applied uniformly to all offerees of the class specified.

(c) For purposes of this rule:

(1) "Administrative fee" means any fee, other than a sales load, deferred sales load or redemption fee, that is

(i) Reasonably intended to cover the costs incurred in connection with exchanges, *Provided that*: the offering company will maintain and preserve records of any determination of the costs incurred in connection with exchanges for a period of not less than six years, the first two years in an easily accessible place. The records preserved under this condition shall be subject to inspection by the Commission in accordance with section 31(b) of the Act [15 U.S.C. 80a-30(b)] as if such records were records required to be maintained under rules adopted under section 31(a) of the Act [15 U.S.C. 80a-30(a)]; or

(ii) A nominal fee as defined in paragraph (c)(6) of this section;

(2) "Deferred sales load" means any amount properly chargeable to sales or promotional activities that is or may be deducted upon redemption of all or a portion of a securityholder's interest in an open-end investment company;

(3) "Exchanged security" means (i) the security actually exchanged pursuant to an exchange offer and (ii) any security exchanged for such security or for any of its predecessors;

(4) "Group of investment companies" means any two or more registered open-end investment companies that have a common investment adviser or principal underwriter or whose investment advisers or principal underwriters are under common control, and that hold themselves out to investors as related companies for purposes of investment and investor services;

(5) "Redemption fee" means any fee, other than a sales load, deferred sales load or administrative fee, that is paid to the fund and is reasonably intended to compensate the fund for expenses incident to redemption of fund shares; and

(6) "Nominal" means slight or *de minimis*.

3. By adding § 270.11c-1 to read as follows:

§ 270.11c-1 Exemption from section 11(c) for certain offers of exchange.

(a) Notwithstanding section 11(c) of the Act [15 U.S.C. 80a-11(c)], a registered unit investment trust (other than a registered separate account) or any sponsor or principal underwriter thereof (collectively, the "offering trust") may make or cause to be made an offer to the holder of a unit of the same series or another series of the offering trust, or of any other registered unit investment trust having the same sponsor or sponsors as the offering trust to exchange that unit for a unit of the offering trust (the "acquired unit") on the basis of the relative net asset values of the respective units to be exchanged except that the unitholder may be charged a sales load; *Provided, that*, any sales load charged with respect to the acquired unit is no greater than the excess, if any, of the sales load applicable to the acquired unit in the absence of an exchange over any sales load previously paid on the exchanged unit.

(b) Where either no sales load is imposed on the acquired unit or the sales load imposed is less than the maximum allowed by paragraph (a) of this section, the offering trust may require the exchanging unitholder to have the exchanged unit for a minimum period of time previously established by the offering trust and uniformly applied to all offerees of the class specified.

(c) For purposes of this rule:

(1) "Exchanged unit" means (i) the unit actually exchanged pursuant to an exchange offer and (ii) any unit previously exchanged for such unit or for any of its predecessors; and

(2) In calculating any sales load charged with respect to the acquired unit, where a unitholder exchanges less than all of his units, the units upon which the highest sales load was previously paid is deemed exchanged first.

By the Commission.

Jonathan G. Katz,

Secretary.

July 29, 1988.

[FR. Doc. 88-18151 Filed 8-10-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY**Customs Service****19 CFR Part 134****Country of Origin Marking of Fruit Juice Containers; Extension of Time for Comments**

AGENCY: Customs Service, Treasury.

ACTION: Extension of comment period.

SUMMARY: This notice extends the period of time within which interested members of the public may submit comments concerning the Customs Service's interpretation of country of origin marking rules as they are applied to containers of fruit juice made with imported juice concentrate. Customs is reconsidering the merits of major supplier marking for such fruit juice containers. Major supplier marking stipulates that if a processor obtains 75 percent or more of its imported concentrate from one source country, only that source country need be disclosed. Otherwise, if no single source accounts for 75 percent or more of the concentrate, then all source countries must be disclosed. Customs is now determining whether major supplier marking provides the level of information to consumers that was contemplated by the country of origin marking laws, as codified in the Tariff Act of 1930, as amended. A notice inviting the public to comment on Customs reconsideration of major supplier marking for fruit juice containers was published in the *Federal Register* on June 7, 1988 (53 FR 20869), and comments were to have been received on or before August 8, 1988. Customs has received several requests to extend the period of time for comments. The requesters state additional time is necessary to prepare reasonably responsive comments. Customs believes the requests have merit. Accordingly, the period of time for the submission of comments is being extended for two weeks.

DATE: Comments are requested on or before August 22, 1988.

ADDRESS: Comments may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, Room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

All comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days, at the address above.

FOR FURTHER INFORMATION CONTACT:

John Doyle, Commercial Rulings Division (202-566-5765).

Dated: August 5, 1988.

Harvey B. Fox,

Acting Deputy Assistant Commissioner,
Office of Commercial Operations.

[FR Doc. 88-18243 Filed 8-9-88; 11:48 am]

BILLING CODE 4820-02-M

DEPARTMENT OF LABOR**Mine Safety and Health Administration****30 CFR Parts 20, 75, and 77****Electric Mine Lamps Other Than Standard Cap Lamps; Certified and Qualified Persons; Automatic Warning Devices on Mobile Equipment; Public Hearing**

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of public hearing.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold a public hearing on its proposed rules for electric mine lamps other than standard cap lamps, certified and qualified persons, and automatic warning devices on surface mobile equipment. The hearing will be held in Pittsburgh, Pennsylvania, and will cover the major issues raised by comments submitted in response to the proposed rules.

DATES: All requests to make oral presentations for the record should be submitted at least five days prior to the hearing date. Immediately before hearing, any unallotted time will be made available to persons making later requests.

The public hearing will be held on August 30, 1988, beginning at 9:00 a.m.

ADDRESSES: The hearing will be held at the following location: Pittsburgh Green Tree Marriott, 101 Marriott Drive, Birch Room, Pittsburgh, Pennsylvania 15205.

Send requests to make oral presentations to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT:

Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, Phone (703) 235-1910.

SUPPLEMENTARY INFORMATION: On April 13, 1988, MSHA published proposed rules to revise existing standards for the investigation and approval of mine lamps that will meet the design, construction and test requirements in Part 20 of Title 30 of the Code of Federal Regulations (53 FR 12250); revise existing standards for temporary qualification or certification of persons at underground and surface coal mines (53 FR 12252), and revise existing standards that require certain surface mobile equipment, such as front-end loaders, forklifts, tractors, and graders, to be equipped with an automatic

warning device which gives an audible alarm when the equipment is operated in reverse (53 FR 12253).

The written comment period for these proposed rules ended on July 15, 1988. In the comments on the proposed rules, MSHA received requests for a public hearing. The purpose of the public hearing is to receive relevant comments and respond to questions about the proposed rules. The hearing will be conducted in an informal manner by a panel of MSHA officials. Although formal rules of evidence will not apply, the presiding official may exercise discretion in excluding irrelevant or unduly repetitious material and questions.

The proceeding will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. During these presentations, the hearing panel will be available to answer relevant questions. At the discretion of the presiding official, speakers may be limited to a maximum of 20 minutes for their presentations. Time will be made available at the end of the hearing for rebuttal statements. A verbatim transcript of the proceeding will be taken and made part of the rulemaking record. Copies of the hearing transcript will be made available for review by the public.

MSHA will also accept additional written comments and other appropriate data from any interested party, including those not presenting oral statements. Written comments and data submitted to MSHA will be included in the rulemaking record. To allow for the submission of any post-hearing comments, the record will remain open until September 30, 1988.

Issues

Commenters questioned a number of provisions contained in the proposals. However, some portions of the rules raised issues of particular concern, which are discussed below. MSHA will specifically address these issues at the public hearing and solicit comments on them in addition to any other aspects of the proposed rules.

A. Electric Mine Lamps Other Standard Cap Lamps

This proposal would allow MSHA to approve electric lamps and flashlights that incorporate technology for which the requirements of Part 20 are not applicable, if the Agency determines by testing that the electric lamps or flashlights perform as safely as those which meet the requirements of 30 CFR Part 20. The proposal includes a provision in § 20.8(a)(1) which would

allow MSHA to investigate and approve lamps that are designed and constructed to prevent bulb breakage, thus preventing exposure of the filament and possible ignition of an explosive atmosphere. Commenters are concerned that the proposal does not include performance-oriented criteria and that it does not specify the parameters and purposes of the test to be performed. One commenter is opposed to the concept of allowing the applicant or third party to perform the tests and procedures for the approval process under 30 CFR Part 7.

B. Certified and Qualified Persons

Certain MSHA regulations require persons working in coal mines to be qualified or certified to perform certain tasks such as making ventilation examinations or operating personnel hoists. The existing rule requires mine operators to submit certification and qualification applications to MSHA every six months for recertification. The proposed rule would affect temporary qualification and certification of mine foremen, assistant mine foremen, preshift examiners and hoist operators. It would delete the existing six-month limitation and would permit such persons to be certified or qualified for as long as they continue to satisfy the requirements needed to obtain the certification or qualification, fulfill any applicable retraining requirements, and remain employed by the same coal mine or by the same independent contractor. Commenters generally agreed that the need for re-application for certification or qualification every six months is unnecessary and could be eliminated without affecting safety and health. Several commenters suggested that all coal mines operated by the same company within the same State be considered "the same coal mine." Commenters also suggested that a person's certification or qualification should remain valid for any mine, company, or State that chooses to honor the certification, as long as the person has continued to satisfy all requirements necessary to keep the certification valid. In support of this position, commenters stated that the experience requirements for certification are the same regardless of the mine or company at which the person is employed, or the State in which application for certification is made.

Some commenters suggested changes beyond the stated scope of the proposal. For example, some commenters suggested that the reference in Part 77 to competence in testing for oxygen deficiency with a flame safety lamp be

revised to address any device approved for such purpose by MSHA.

Another commenter suggested establishing a six-month apprentice program; requiring a minimum of five years of mining experience with two years experience on a coal producing section; providing for an annual eight-hour refresher training course for certified persons; and setting procedures for withdrawal of certification, including the creation of a Board of Appeals in each MSHA district. One commenter suggested that the one year experience required prior to application, for the hoisting engineer, would more appropriately be spent as an apprentice to a qualified hoisting engineer with the last six months of that period spent training in the operation of the hoist while under the supervision of a qualified hoisting engineer. Several commenters suggested deleting the prior experience requirement that the person has held the position of mine foreman, assistant mine foreman, preshift examiner, or hoisting engineer for a period of six months immediately preceding the filing of the application. In support of this position, commenters stated that it is not realistic for a person to obtain experience in a position for which the person is not qualified without first receiving the necessary certification required to fulfill the position. To do so would place such person in violation of the rule.

C. Mobile Equipment; Automatic Warning Devices

The proposal would modify the existing rule for backup alarms by allowing an exception for pickup trucks where the driver has an unobstructed rear view. One commenter suggested that pickup trucks should not be excluded. In support of this position, the commenter stated that pickup trucks are normally used to transport supplies and parts from one location to another at surface mines, and that many of these items are large enough to obstruct the operator's rear view. Another commenter suggested that pickup trucks should only be excluded if they are equipped with functioning backup lights.

The proposal would also allow for alternatives to traditional backup alarms such as discriminating backup alarms and the use of a strobe light instead of an audible alarm when mobile equipment is operated at night. Commenters expressed concern that there are too many operational problems with the new devices and that they should not be incorporated into the standard. One commenter stated that strobe lights only be used in conjunction

with alarms. The commenter suggested that the strobe light be of a distinct color so it can be differentiated from other strobe lights that may be used, and that the device be capable of warning for at least 100 feet from the vehicle to assure that the persons in danger would have ample response time.

Date: August 5, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Health.

[FR Doc. 88-18146 Filed 8-10-88; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-88-13]

Drawbridge Operation Regulations; St. Marks River, FL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Florida Department of Transportation, the Coast Guard is considering a change to the regulation governing the operation of the bascule span bridge on U.S. Highway 98 (SR 30) over the St. Marks River, mile 9.0, at Newport, Wakulla County, Florida, by permitting the draw to remain closed to navigation at all times. Presently the draw opens on call with 48 hours advance notice. This proposal is being made because of the absence of significant navigation on the waterway. That is, the bridge has been opened only three times in the past ten years for passage of marine traffic. This action should accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation, with substantial savings to the taxpayers.

DATE: Comments must be received on or before September 26, 1988.

ADDRESS: Comments should be mailed to Commander (ob), Eighth Coast Guard District, 500 Camp Street, New Orleans, Louisiana 70130-3396. The comments and other materials referenced in this notice will be available for inspection and copying in Room 1115 at this address. Normal office hours are between 8:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. This proposed regulation may be changed in the light of comments received.

Drafting Information

The drafters of this notice are John Wachter, project officer, and Commander J.A. Unzicker, project attorney.

Discussion of Proposed Regulation

Vertical clearance of the bridge in the closed position is 9 feet above mean high tide and 11 feet above mean low tide. Navigation requiring bridge openings is practically non-existent, since only three boats have passed through the bridge in the past ten years. These three boats were recreational sailing vessels. There is no commercial navigation on the waterway. In order to determine if there was excessive opposition to this proposed permanent closure, the Florida Department of Transportation advertised its intentions in the official newspaper of record in Wakulla County and conducted a public hearing. Only one person attended the public hearing, other than those highway department officials conducting the hearing. The individual, an owner of land located upstream of the bridge, objected that closure of the bridge will subtract from the value of his property. He does not own a boat that requires an opening of the draw.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that there have been but three requests for openings in the past ten years by recreational boaters, and there have

been no requests for openings by commercial navigation. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; and 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.327 is revised to read as follows:

§ 117.327 St. Marks River.

The draw of the US98-S30 bridge, mile 9.0 at Newport, need not be opened for the passage of vessels.

Dated: August 1, 1988.

W.F. Merlin,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 88-18225 Filed 8-10-88; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 21

Use of Educational Assistance Benefits as a Part of a Vocational Rehabilitation Program

AGENCY: Veterans Administration.

ACTION: Proposed regulatory amendment.

SUMMARY: The Department of Defense Authorization Act, 1985, established an educational assistance program under Chapter 30, Title 38, United States Code. One of the law's provisions allows an otherwise eligible veteran to elect payment at the rates provided under this program for training which the veteran is pursuing as a part of a vocational rehabilitation program. The Veterans Administration (VA) is proposing to implement this provision of the law.

DATES: Comments must be received on or before September 12, 1988. Comments will be available for public inspection until September 20, 1988. It is proposed

to make these amendments effective October 19, 1984, the date upon which the program authorized under Chapter 30, Title 38, United States Code became effective.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 at the above address, only between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays), until September 20, 1988.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Policy and Program Development (226A), Vocational Rehabilitation and Education Service, Department of Veterans Benefits, (202) 233-2886.

SUPPLEMENTARY INFORMATION: The Veterans Administration provides vocational rehabilitation for eligible service-disabled veterans under the provisions of Chapter 31, Title 38, United States Code.

The Department of Defense Authorization Act, 1985, establishes a new educational assistance program for persons entering the Armed Forces on or after July 1, 1985. One of the provisions of this educational assistance program allows veterans who are eligible under both the new educational assistance program (Chapter 30) and the vocational rehabilitation program (Chapter 31) to elect payment at the rate paid under Chapter 30 for training which the veteran is pursuing as a part of his or her vocational rehabilitation program. A similar provision exists with regard to the educational assistance program authorized under Chapter 34, Title 38, United States Code. The VA proposes to implement the Chapter 30 provision by amending § 21.264 and related sections which allow eligible veterans to receive payment at the rates paid under Chapter 34 as a part of a vocational rehabilitation program under Chapter 31.

The regulations contained herein will better acquaint eligible veterans, vocational training and rehabilitation facilities, and the public at large with the way these provisions will be implemented. The VA proposes to make these regulations retroactively effective. These are interpretive rules which implement statutory changes. Moreover, the VA finds that good cause exists for making these rules, like the sections of law which they implement, retroactive

to the date the educational assistance program authorized under Pub. L. 98-525 becomes effective. A delayed effective date would be contrary to statutory design, would complicate implementation of these provisions of law, and might result in denial of a benefit to a veteran who is entitled by law to that benefit.

These proposed amendments do not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulation. The proposal will not have a \$100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant effects on the economy.

The Administrator certifies that these proposed amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these proposed rules are therefore exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604. The reasons for this certification are that the proposed regulations simply implement and interpret statutory provisions. These changes only concern the eligibility and participation of individual veterans under the vocational rehabilitation program.

(The Catalog of Federal Domestic Assistance Number is 64.116)

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: July 25, 1988.

Thomas K. Turnage,
Administrator.

38 CFR Part 21 is proposed to be amended as set forth below:

PART 21—[AMENDED]

1. Section 21.22 is amended by revising paragraph (a) introductory text and the authority citation following paragraph (a)(2), to read as follows:

§ 21.22 Nonduplication—Federal programs.

(a) *Allowances.* A service-disabled veteran who is eligible for benefits under Chapter 31, may not receive a subsistence allowance or elect payment of an allowance at the educational assistance rate under Chapter 30 or Chapter 34 pursuant to § 21.264 if the veteran:

(Authority: 38 U.S.C. 1781; Pub. L. 98-525)

2. Section 21.78 is amended by revising paragraph (b)(3), (b)(4) introductory text, (b)(4)(ii) and the authority citation, to read as follows:

§ 21.78 Approving more than 48 months of rehabilitations.

(b) * * *

(3) The veteran previously used education benefit entitlement under other programs administered by the VA, and the additional period of assistance to be provided under Chapter 31 which the veteran needs to become employable will result in more than 48 months being used under all VA education programs; under these conditions the number of months necessary to complete the program may be authorized under Chapter 31, provided that the length of the extension will not result in authorization of more than 48 months under Chapter 31 alone.

(Authority: 38 U.S.C. 1795)

(4) A veteran in an approved Chapter 31 program has elected payment of benefits at the Chapter 30 or Chapter 34 educational assistance rate. The 48 month limitation may be exceeded only:

(ii) If the veteran is in a course on a term, quarter, or semester basis which began before the 36 month limitation on Chapter 30 entitlement or 45 month limitation on Chapter 34 entitlement was reached, and completion of the course will be possible by permitting the veteran to complete the training under Chapter 31.

(Authority: 38 U.S.C. 1413, 1795; Pub. L. 98-525)

3. Section 21.148 is amended by revising paragraph (d) to read as follows:

§ 21.148 Tutorial assistance.

(d) *Payment at the Chapter 30 or Chapter 34 rate.* If a veteran has elected payment at the educational assistance rate payable under Chapter 30 or Chapter 34, he or she may be provided individualized tutorial assistance under provision of Chapter 31. (See § 21.334.)

(Authority: 38 U.S.C. 1508(f); Pub. L. 98-525)

4. Section 21.254 is amended by revising paragraph (b)(1) and the authority citation following paragraph (b)(4), to read as follows:

§ 21.254 Supportive services.

(b) * * *

(1) Subsistence allowance, or payment of an allowance at the educational assistance rate paid under Chapter 30 or Chapter 34 for similar training;

(Authority: 38 U.S.C. 1504(a), 1508(f); Pub. L. 98-525)

5. Section 21.256 is amended by revising paragraph (e)(2) and adding an authority citation, to read as follows:

§ 21.256 Incentives for employers.

(e) * * *

(2) Notwithstanding any other provisions of these regulations, if the program in which the veteran is participating meets the criteria for approval of on-job training under Chapter 30 or Chapter 34, the veteran may be paid educational assistance under Chapter 30 or Chapter 34 to the extent that he or she has remaining eligibility and entitlement under Chapter 30 or Chapter 34. (See § 21.264)

(Authority: 38 U.S.C. 1508(f), 1516(b); Pub. L. 98-525)

6. Section 21.260 is amended by revising paragraph (a) and the authority citation, to read as follows:

§ 21.260 Subsistence allowance.

(a) *General.* A veteran in a rehabilitation program under Chapter 31 will receive a monthly subsistence allowance at the rates specified in paragraph (b) of this section, unless he or she has elected to receive payment at the rate of the monthly educational assistance allowance payable under Chapter 30 or Chapter 34 for similar training. See § 21.264 of this part for election of payment at the Chapter 30 or Chapter 34 rate, § 21.4136 of this part for payment at Chapter 34 rates, and §§ 21.7136, 21.7137, and 21.7138 of this part for payment at Chapter 30 rates.

(Authority: 38 U.S.C. 1508(a), 1508(a), 1508(f); Pub. L. 98-525)

7. Section 21.264 is amended by revising the section heading, paragraph (a) introductory text, (a)(1), (a)(2), the authority citation following paragraph (a)(3), (b)(1) and the authority citation following paragraph (b)(3), (c) introductory text and the authority citation following paragraph (c)(3)(iii), (d) and the authority citation, to read as follows:

§ 21.264 Election of payment at the Chapter 30 or Chapter 34 educational assistance rate.

(a) *Eligibility.* A veteran who applies for and is found entitled to training or

education under Chapter 31, may elect to receive payment at the educational allowance rate and other assistance furnished under Chapter 30 or Chapter 34, for similar training in lieu of a subsistence allowance, provided the following criteria are met:

(1) The veteran has remaining eligibility for, and entitlement to educational assistance under Chapter 30 or Chapter 34;

(2) The veteran enrolls in a program of education or training approved for benefits under Chapter 30 or Chapter 34;

(Authority: 38 U.S.C. 1508(f); Pub. L. 98-525)

(b) * * *

(1) Chapter 30 or Chapter 34 eligibility or entitlement ends earlier;

(Authority: 38 U.S.C. 1508(f); Pub. L. 98-525)

(c) *Services precluded.* A veteran entitled to vocational rehabilitation training or education who elects payment at the educational assistance rate payable under Chapter 30 and Chapter 34 shall be provided the same training and rehabilitation services as other veterans under Chapter 31, but may not be provided:

(Authority: 38 U.S.C. 1508(f); Pub. L. 98-525)

(d) *Chapter 30 or Chapter 34 provisions applicable.* A veteran who has elected payment at the Chapter 30 or Chapter 34 educational assistance rate must meet the same terms and conditions as other veterans pursuing similar training under these programs.

(Authority: 38 U.S.C. 1508(f); Pub. L. 98-525)

8. Section 21.268 is amended by revising paragraph (b), to read as follows:

§ 21.268 Employment adjustment allowance.

(b) *Reelection of subsistence allowance.* A veteran who has elected payment at the Chapter 30 or Chapter 34 educational assistance allowance rate may be paid an employment adjustment allowance only if he or she reelects subsistence allowance to become effective not later than the day following completion of the period of rehabilitation to the point of employability.

(Authority: 38 U.S.C. 1508(f); Pub. L. 98-525)

9. Section 21.272 is amended by revising paragraph (b)(1) and adding an authority citation following paragraph (b)(3), to read as follows:

§ 21.272 Veteran-student services.

(b) * * *

(1) Need of the veteran to augment the subsistence allowance or payment made by the Chapter 30 or Chapter 34 rate;

(Authority: 38 U.S.C. 1504(a)(4), 1508(f), 1685; Pub. L. 98-525)

10. Section 21.276 is amended by revising paragraphs (d), (e), and (g), to read as follows:

§ 21.276 Incarcerated veterans.

(d) *Halfway house.* A subsistence allowance may be paid to a veteran pursuing a rehabilitation program while residing in a halfway house as a result of a felony conviction even though all of the veteran's living expenses are paid by a non-VA Federal, State, or local government program.

(Authority: 38 U.S.C. 1508(a))

(e) *Work-release program.* A subsistence allowance may be paid to a veteran in a work-release program as a result of a felony conviction.

(g) *Payment of allowance at the rates paid under Chapter 30 or Chapter 34.* A veteran incarcerated for a felony conviction or a veteran in a halfway house or work-release program who elects payment at the educational assistance rate paid under Chapter 30 or Chapter 34 shall be paid in accordance with the provisions of law applicable to other incarcerated veterans training under Chapter 30 or Chapter 34.

(Authority: 38 U.S.C. 1508(f), 1780(a); Pub. L. 98-525)

11. Section 21.320 is amended by revising paragraph (b)(3) and the authority citation, and paragraph (d)(3) and the authority citation, to read as follows:

§ 21.320 Awards for subsistence allowance and authorization of rehabilitation services.

(b) * * *

(3) The veteran elects payment at the educational assistance allowance rate, in which case the commencing date of payment is determined under provisions applicable to commencement of payment under Chapter 30 or Chapter 34.

(Authority: 38 U.S.C. 1508(a), 1508(f); Pub. L. 98-525)

(d) * * *

(3) A veteran has elected payment at the educational assistance rate paid under Chapter 30 or Chapter 34. The ending date of the award is determined under regulations applicable to termination of training under Chapter 30 or Chapter 34.

(Authority: 38 U.S.C. 1508(a), 1508(f); Pub. L. 98-525)

12. Section 21.330 is amended by revising paragraph (a) and the authority citation, to read as follows:

§ 21.330 Apportionment.

(a) *General.* Where in order, the VA will apportion subsistence allowance in accordance with § 3.451 of this title, subject to the limitations of § 3.458 of this title. If the veteran is in receipt of benefits at the Chapter 34 rate, apportionments shall be in accordance with § 21.4140 of this part. If the veteran is in receipt of benefits at the Chapter 30 rate, the VA will not apportion these benefits.

(Authority: 38 U.S.C. 3107(c); Pub. L. 98-525)

13. Section 21.334 is amended by revising the section heading, paragraph (a) and the authority citation, (b) introductory text, (b)(1), the authority citation following paragraph (b)(2), (c) introductory text, (c)(2), (c)(3), the authority citation following paragraph (c)(4), (d)(1), (d)(2) and the authority citation, and by adding paragraph (e), to read as follows:

§ 21.334 Election of payment at the Chapter 30 or Chapter 34 rate.

(a) *Election.* When the veteran elects payment of an allowance at the Chapter 30 or Chapter 34 rate, the effective dates for commencement, reduction, and termination of the allowance shall be in accordance with §§ 21.4130 through 21.4135 and § 21.1042(a)(2) of this part under Chapter 34, and §§ 21.7130 through 21.7135 and § 21.70509(a) of this part under Chapter 30.

(Authority: 38 U.S.C. 1508(f), 1780; Pub. L. 98-525)

(b) *Election of payment at the Chapter 30 or Chapter 34 rate subsequent to induction into a rehabilitation program.* Election of payment at the Chapter 30 or Chapter 34 rate subsequent to induction into training is permissible under provisions of § 21.264 (a) and (b). The effective date of the election is the latest of the following dates:

(1) The commencing date determined under the provisions of § 21.4131 of this part in the case of a veteran who has elected payment at the Chapter 34 rate or determined under § 21.7131 of this

part in the case of a veteran who has elected payment at the Chapter 30 rate; or

(Authority: 38 U.S.C. 1508(f); Pub. L. 98-525)

(c) *Reelection of subsistence allowance subsequent to induction.* If a veteran reelects subsistence allowance under provisions of § 21.264(b) of this part, the effective date of the change is earliest of the following:

(2) The veteran's Chapter 30 or Chapter 34 delimiting date;

(3) The day after exhaustion of Chapter 30 or Chapter 34 entitlement; or

(Authority: 38 U.S.C. 1508(f); Pub. L. 98-525)

(d) * * *

(1) *Payment at the Chapter 30 or Chapter 34 rate.* If an otherwise eligible veteran elects payment at the Chapter 30 or Chapter 34 rate during a period between periods of instruction, the effective date of the election shall be the first day of the next period of instruction.

(2) *Subsistence allowance.* If an otherwise eligible veteran reelects subsistence allowance during leave or between periods of instruction following election of payment at the Chapter 30 and Chapter 34 rate, the effective date of the change will be the date of the reelection or the beginning of the next period of training, whichever is to the veteran's benefit.

(Authority: 38 U.S.C. 1508(f), Pub. L. 98-525)

(e) *Effect of Chapter 34 program termination.* (1) Since Chapter 34 benefits are not payable beyond December 31, 1989, any previous election of benefits at that rate is terminated as of that date;

(2) A veteran entitled to Chapter 30 benefits based on his or her Chapter 34 eligibility as of December 31, 1989, and whose election of Chapter 34 benefits is terminated as of that date under paragraph (1) must, if the individual desires payment at the Chapter 30 rate, elect such payment.

(Authority: 38 U.S.C. 1411(a); Pub. L. 98-525)

14. Section 21.340 is amended by revising paragraph (c) and the authority citation, to read as follows:

§ 21.340 Introduction.

(c) *Election of benefits at the Chapter 30 or Chapter 34 rate.* If a veteran elects to receive an allowance paid at the Chapter 30 or Chapter 34 rate, the effect of absences is determined in the same manner as provided in §§ 21.424 and 21.4205 of this part for Chapter 34 or

§§ 21.7139 and 21.7154 of this part for Chapter 30.

(Authority: 38 U.S.C. 1508(f), 1510; Pub. L. 98-525)

[FR Doc. 88-18012 Filed 8-10-88; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 433

[BQC-59-P]

Medicaid Program; Medicaid Management Information System; Revised Definition of "Mechanized Claims Processing and Information Retrieval System"

AGENCY: Health Care Financing Administration (HCFA), DHHS.

ACTION: Proposed rule.

SUMMARY: We are proposing a number of revisions to regulations concerning mechanized claims processing and information retrieval systems ("system" or "systems"). We would revise definitions to show that we will make available Federal funding at 75 and 90 percent of State Medicaid agency expenditures only for HCFA-required (or core) subsystems of the system and for HCFA-required changes to that core system. A major result of these changes is that we would discontinue 75 and 90 percent funding for eligibility determination systems because they do not meet the definition of core subsystems of "mechanized claims processing and information retrieval system." We would delete the definition of "enhancement," as we propose to discontinue 75 percent funding for enhancements except those required by HCFA.

We would also conform our regulations to changes made by sections 9503(b)(2) and 9518 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (Pub. L. 99-272), which involve technical changes. One change affects the frequency and scope of our system reviews, and another involves the date by which States that are not exempt by law must have an operating system.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on October 11, 1988.

ADDRESSES: Address comments in writing to Administrator, Health Care

Financing Administration, Department of Health and Human Services, Attention: BQC-59-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, DC, or Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BQC-59-P. Comments will be available for public inspection as they are received, generally beginning approximately 2 weeks after publication, in Room 309-G of the Department's offices at 200 Independence Ave. SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m., (202-245-7890).

FOR FURTHER INFORMATION CONTACT:

Guy L. Harriman, 301-966-3292.

SUPPLEMENTARY INFORMATION:

A. Background

Basis of the System

A Medicaid management information system (commonly known as the MMIS) is a mechanized system ("system") of claims processing and information retrieval used in State Medicaid programs under title XIX of the Social Security Act (the Act). The system, originally authorized by section 1903(a)(3) of the Act, is used to process Medicaid claims and to retrieve and produce utilization data and management information about medical care and services furnished to recipients. Each State (with some exceptions) is required by section 1903(r) of the Act to have in place an operational and approved system or be subject to reductions of Federal financial participation (FFP).

Section 1903(a)(3) of the Act authorizes FFP at 90 percent of the sums a State Medicaid agency expends for the design, development, or installation of a mechanized claims processing and information retrieval system that the Secretary determines is likely to provide more efficient, economical and effective administration of the program and at 75 percent for the operation of these systems. (Hereafter, we will refer to 90 percent and 75 percent FFP as "enhanced" FFP since it is greater than the 50 percent FFP authorized for most Medicaid administrative expenses.)

Current Regulations

Our regulations concerning mechanized claims processing and information retrieval systems are at 42 CFR Part 433, Subpart C. Section 433.111

lists terms used in obtaining initial approval or making changes to the system; the terms are defined at 45 CFR 95.605. A State agency's system must comply with the requirements in § 433.112 through § 433.122, before the agency may obtain enhanced funding. These sections discuss the availability of enhanced FFP, identify the conditions a system must meet for approval or reapproval and specify that an agency must meet HCFA-determined system requirements and performance standards if it is to continue to receive enhanced funding. Section 433.123 describes procedures we follow to ensure that we inform interested parties adequately before we make changes in conditions of approval or reapproval and in system requirements for systems eligible for enhanced funding.

The general HHS requirements for approval of advanced planning documents (APDs) are found at 45 CFR Part 95, Subpart F, which prescribe the conditions under which HHS will approve FFP at applicable rates for costs of automatic data processing for the Medicaid program and for the Aid to Families with Dependent Children (AFDC) and the Child Support Enforcement program (titles IV-A and IV-D respectively). On December 18, 1986, HHS amended 45 CFR Part 95, Subpart F to simplify and make those regulations consistent, to the maximum extent possible, with regulations governing availability of FFP at the enhanced matching rate for computerized systems that support programs under titles IV-A, IV-D and XIX (51 FR 45321). At the same time, HHS revised 42 CFR 433.111 by removing the content of the definitions of all the terms found there previously (except that of "mechanized claims processing and information retrieval system") and cross-referring the reader to 45 CFR 95.605 for definitions of the other terms. The term "improvement" was replaced by "enhancement" in §§ 433.111 and 433.112.

B. Proposed Changes to Regulations

Under current policy based on HCFA regulations at § 433.112 and at 45 CFR Part 95, Subpart F, we pay 90 percent FFP for the design, development, installation or enhancement of a mechanized claims processing and information retrieval system based on an APD approved by HCFA. Under the proposed rule we would approve an APD as being likely to provide more efficient, economical and effective administration of the State plan only for a mechanized claims processing and information retrieval system that consists of the required, or core,

subsystems of that system, which we describe in Part 11 of the State Medicaid Manual. There are currently six required core subsystems: The Recipient, Provider, Claims Processing, Reference File, Surveillance and Utilization Review, and the Management and Administrative Reporting subsystems.

1. "Mechanized claims processing and information retrieval system"

We propose to revise the current definition of "mechanized claims processing and information retrieval system" in 42 CFR 433.111 so that it consists of the HCFA-required, or core, subsystems specified in the State Medicaid Manual. If a State were to initiate changes to its system as likely to provide more efficient, economical and effective administration of the State plan and HCFA approved them, the changes would be funded at the regular matching rate of 50 percent in accordance with § 433.15(b)(7) and 45 CFR Part 95, Subpart F.

Under the revised definition, "mechanized claims processing and information retrieval system" would be the six Statewide core subsystems of software and hardware used (1) to process claims by providers of medical care and services for items and services furnished to eligible recipients under the Medicaid program and (2) to retrieve and produce service utilization and management information that is required by the Medicaid single State agency and Federal government for Medicaid program administration and audit purposes. The system would be used to process claims only for items and services covered under the State plan.

2. Enhancements

We also propose to delete the term "enhancement" found in § 433.111. Neither the term "enhancement" nor "improvement", as enhancement was formerly called, appears in the statute. Under our proposal, we would fund only HCFA-approved core systems and subsystems and HCFA-required changes at the enhanced funding rates. Conversely, any modification suggested by a State that is not approved by HCFA as a core system requirement would not be viewed by HCFA as an "improvement" for purposes of enhanced FFP.

Under this proposal, the only changes for which we would allow 75 or 90 percent funding are HCFA-required changes to the required core system or subsystems. Any other system design and development changes that are approved would be funded at the regular

50 percent matching rate. (Although HHS defines "enhancements" for Medicaid in 45 CFR 95.605, the definition does not require Medicaid to pay for enhancements. It merely makes consistent the definition and term from program to program.)

Congress added section 1903(a)(3) of the Act to authorize enhanced FFP for mechanized claims processing and information retrieval systems that the Secretary determines are likely to provide more efficient, economical and effective administration of the State plan. Congress expected the savings from improved administrative efficiency to more than offset the cost of implementing the provision. (H.R. Rep. No. 92-231, 92nd Cong., 1st Sess. 103-104 (1971))

Once these proposed regulations are made final, we would not provide enhanced FFP for any system or subsystem that does not meet the above definition of mechanized claims processing and information retrieval system. Therefore, under § 433.112, we would approve 90 percent FFP only when the requirements published in the *Federal Register* and in Part 11 of the State Medicaid Manual for the system being designed, developed, or installed are met. Approval of a system for 75 percent FFP for operation would continue to depend on that system meeting the published requirements as required by § 433.116. We reaffirm our policy that 75 percent FFP is available only for costs directly attributable to approved systems.

The purpose of the proposed amendment is to avoid the waste of effort expended in preparing an APD or procurement for which we would disapprove enhanced FFP. Currently, we receive APDs for system projects and procurements that we would not fund (at an enhanced rate) under the proposed change, such as eligibility determination systems or State-initiated changes.

3. We also propose to revise § 433.112(a) to read as it did from July 30, 1985 to December 18, 1986, except that it would not include the term "improvement". When this section was revised on December 18, 1986, the language that was in the Code of Federal Regulations before July 30, 1985 was inadvertently used. Since there was no intention to change the substance of this paragraph in December, 1986, we would restore the earlier language.

4. We are also proposing to change the references in the regulations from "MMIS" (which appear in §§ 433.121 and 433.131), to "system," which is the short form for the term "mechanized claims processing and information

retrieval system" and is currently in use in all sections in Part 433, Subpart C except § 433.131. We have not defined "MMIS" in regulations and would make the change for consistency.

C. Proposed Revisions to Implement Pub. L. 99-272

We also propose revising our regulations to implement sections 9503(b)(2) and 9518 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (Pub. L. 99-272), as enacted April 7, 1986.

Section 9503(b)(2)(A) of the COBRA amends section 1903(r)(4)(A) of the Act by requiring the Secretary to review each approved system at least once every three years, instead of once a year. Section 9503(b)(2)(B) amends section 1903(r)(4)(A) of the Act to permit the Secretary, at his discretion, to review either the entire system of a given State agency or only those standards, system requirements and other conditions demonstrating weakness in previous reviews.

Section 9518 of the COBRA amends section 1903(r)(1)(B) of the Act so that State agencies must have had an approved system no later than September 30, 1985, instead of September 30, 1982. The amendment applies to payment made under section 1903(a) of the Act for calendar quarters beginning on or after October 1, 1982.

We would revise § 433.119, Conditions for yearly approval; notice of decision, to show that we would review each system operation at least once every three years and to indicate that we would not have to review the entire system but we would, at a minimum, have to review parts of the system operation that showed weaknesses in the previous review.

We would revise § 433.122 to delete the references to "yearly" review.

We propose to revise § 433.113, Reduction of FFP for failure to operate a system and obtain initial approval, to change the deadline by which an agency must have an approved system to September 30, 1985.

D. Funding for Optional Systems and Subsystems

Many State agencies receive enhanced funding for system applications for third party liability (TPL), which are integrated with the core system or subsystem, or for an eligibility determination system, or both.

1. Third Party Liability

We interpret section 9503(a) of COBRA as requiring State Medicaid agencies to have an approved plan of action for TPL and to use the system to

carry out the plan of action. We currently require the COBRA-mandated statutory TPL changes as part of the core system by regulation (42 CFR 433.112(b)(2)). If these requirements are not currently part of the system approved for enhanced matching, they should be implemented as HCFA requirements to all approved systems for which enhanced matching is claimed. Performance of the system in meeting these requirements will continue to be monitored by the system reapproval review required by section 1903(r)(4) of the Act. The TPL plan required by COBRA will also be monitored as part of this approval review within the limits of system requirements and performance standards (Sections 1903(r)(4) requires us to reduce FFP for the disapproved system if performance standards are not met.) No new system requirements or performance standards are need to implement COBRA. If system modifications are required in some States to meet COBRA requirements, we will continue to make enhanced FFP available for modifications to those TPL systems that are part of the required core system. We are publishing a separate regulation concerning the TPL plan requirements of COBRA. (See 52 FR 6350, March 3, 1987, for the proposed rule, State Plan Requirements for TPL Collections.)

2. Eligibility determination systems

a. Background

Eligibility of many Medicaid applicants and recipients is determined by an agency other than the State Medicaid agency. Under section 1902(a)(10)(A)(i)(I) of the Act, States must provide Medicaid to all recipients of AFDC benefits (administered under the auspices of the Family Services Administration) and certain individuals who are deemed to be recipients of AFDC. Therefore, the determination of Medicaid eligibility for these individuals is made by the State's AFDC agency.

Under sections 1902(a)(10)(A)(i)(II) and 1902(f) of the Act, States have the option of providing Medicaid to all recipients of Supplemental Security Income (SSI) (cash benefits to aged, blind, and disabled individuals) or to use more restrictive requirements of eligibility than SSI for determinations of Medicaid eligibility for aged, blind, and disabled individuals. Fourteen States have elected to use more restrictive requirements for Medicaid eligibility for the aged, blind, and disabled, and therefore the State Medicaid agency makes the eligibility determination. Five

States use SSI criteria for the determination of Medicaid eligibility and require recipients of SSI to file a Medicaid application with the State Medicaid agency. (These five States must provide Medicaid to all recipients of SSI who file for Medicaid.) The remaining States have entered into an agreement with the Social Security Administration (SSA) to determine Medicaid eligibility for aged, blind, and disabled individuals. In these States, SSA provides the State Medicaid agency with information on the current eligibility status of all applicants and recipients of SSI benefits.

There are additional groups of individuals that States are required to cover under their Medicaid plan—for example, qualified pregnant women and children under age eight and individuals who lose eligibility for SSI benefits because of a cost-of-living increase in Social Security benefits. Three are also groups of individuals that States may elect to cover under the Medicaid plans—for example, the medically needy and recipients of optional State supplements. The State Medicaid agency may make Medicaid eligibility determinations for these individuals or may enter into an agreement with another agency to make the determinations.

The amount of work involved in making Medicaid eligibility determinations for individuals other than AFDC and SSI recipients can vary from minimal, where Medicaid eligibility requirements differ from the cash assistance programs' requirements by only one or two criteria, to complex, where the Medicaid program's medically needy criteria are far more restrictive than criteria for welfare payments. In all cases, the eligibility determination is derived from a cash welfare-assistance determination; the Medicaid agency does not determine eligibility as a totally separate process from the cash welfare eligibility determination. As a result, in States where the Medicaid agency has an eligibility determination system, the system is integrated as a multi-program (AFDC, Food Stamps, Medicaid and other welfare programs) system. Most States are in the process of developing integrated systems. Medicaid pays its allocated share of the costs of the integrated system.

During the mid-1970's, a number of dramatic systems improvements supported a decision increasing the availability of enhanced funding. In one State, once a mechanized claims processing and information retrieval system was installed, there were Medicaid savings of approximately \$25

million in the first three months and \$100 million in the first year. Consequently, HCFA recognized some costs that benefited the operation of the mechanized claims processing and information retrieval system as reimbursable at enhanced rates of FFP and that were likely to provide more efficient, economical and effective administration of the State plan.

A similar line of reasoning applied to eligibility determination systems. Large sums of money depend on the accuracy and timeliness of eligibility determinations. Therefore, a system that enhances the accuracy and timeliness of eligibility determinations benefits the program. The first eligibility determination system was primarily installed to benefit a State Medicaid program, and a large proportion (40 percent of the installation and 30 percent of the operation) of the cost of this particular system was allocated to Medicaid, and the remainder to other welfare programs. Other States began to request enhanced funding for Medicaid eligibility determination systems, and we supplied it but our allocation was smaller. Some improvement in accuracy and timeliness of claims processing of provider claims resulted.

Since 1977, HCFA has made available 90 percent FFP for the design, development, installation or improvement of eligibility determination systems, subject to approved APDs, and 75 percent FFP for the subsequent operation of these systems, on the basis that applications for eligibility were "claims" and that a system processing these "claims" was a part of the mechanized claims processing and information retrieval system.

In 1981, section 403(a)(3)(B) of the Act, which refers to AFDC, as added by section 406 of Pub. L. 96-265, requires the Secretary to provide 90 percent FFP for the design, development and installation of a mechanized eligibility determination system that meets the requirements of section 402(a)(30) of the Act. In addition, the section requires the Secretary to determine that the systems are "likely to provide more efficient, economical, and effective administration of the plan and to be compatible with the claims processing and information retrieval systems utilized in the administration of State plans approved under title XIX . . ." SSA published an interim final rule (45 CFR 205.35 through 205.38) on September 30, 1981 (45 FR 47784) to implement this provision, and a final rule on April 17, 1986 (51 FR 13001). The 90 percent FFP has been available for

quarters beginning on and after July 1, 1981.

b. Proposal

Eligibility determination systems would no longer be eligible for any enhanced FFP for Medicaid purposes under the proposed definition of mechanized claims processing and information retrieval systems, since enhanced FFP would be available only for costs directly attributable to approved Medicaid systems. Because eligibility determination systems would not be used to process claims by "providers of medical care and services for the medical care and services furnished to the recipients", we would not require their implementation or operation, as part of the core subsystems.

AFDC agencies now may receive 90 percent FFP for implementing eligibility determination systems, giving those agencies considerable incentive, because of the cost and benefits, to implement a system. A State Medicaid agency's involvement in eligibility determinations is minimal (either because AFDC or SSI makes the determination—by law or under contract—or because the determination is derived from eligibility for AFDC or SSI), and not adequate in terms of cost and benefits to justify defining mechanized claims processing and information retrieval system to cover implementation or operation of eligibility determination systems.

In addition, Congress purposely required that 90 percent FFP be made available for AFDC eligibility determination systems by adding section 403(a)(3)(B) of the Act, effective July 1, 1981, and did not do so for Medicaid. Any incentive provided by partial title XIX enhanced funding before 1981 has been superseded by the explicit funding authority under section 403(a)(3) of the Act. This authority has encouraged 44 States to design eligibility determination systems, principally with title IV funding. Because there is no explicit statutory funding authority under title XIX, HCFA is not required to make enhanced FFP available for eligibility determination systems and there is no further need to do so.

c. FFP for an Eligibility Determination System

We propose that, in order to receive any FFP for Medicaid purposes for an eligibility determination system after the effective date of the final rule, a State agency would have to submit an APD in accordance with the requirements of 45 CFR Part 95, Subpart F, for funding.

Once we approve the APD, the State agency would receive 50 percent FFP for administrative costs under section 1903(a)(7) of the Act for the system's design, development, installation, and operation.

A State Medicaid agency with a currently approved APD for a mechanized eligibility determination system would receive Medicaid enhanced funding at 90 percent under paragraph 1903(a)(3)(A) until the effective date of the final version of these regulations. Once the final version is effective, all Medicaid enhanced funding would terminate and Medicaid funding for operation of mechanized eligibility determination and information retrieval systems would be at the 50 percent rate under section 1903(a)(7) of the Act. Any APDs approved by HCFA for eligibility determination systems after the effective date of the final rule would be funded at the 50 percent rate. Eligibility determination system operations being funded at the enhanced operations rate of 75 percent before the effective date of the final regulation would be funded by HCFA at the 50 percent rate after the effective date.

We propose to add a paragraph to § 433.112 to exclude eligibility determination systems specifically from funding at enhanced rates.

E. Regulatory Impact Statement

1. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed regulations that are likely to meet criteria for a "major rule".

A major rule is one that would result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or any geographic regions; or
- (3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

There are currently 45 States that have approved core systems in place. These States would not receive enhanced FFP for those parts of their systems that do not fit the proposed definition of "mechanized claims processing and information retrieval system". We expect some of these States to bear an increased share of data processing costs. However, this would not be a major cost increase for affected States nor would it meet any of

the other criteria for major rules. Therefore, a regulatory impact analysis is not required.

2. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulations would not have a significant impact on a substantial number of small entities. Under the RFA, States are not considered small entities. Therefore, we have determined, and the Secretary certifies, that these proposed regulations would not have a significant economic impact on a substantial number of small entities, and we have not prepared an initial regulatory flexibility analysis.

Paperwork Burden

These changes do not impose paperwork collection requirements. Consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3801 *et seq.*).

F. Response to Comments

Because of the large number of comments we receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments received timely and respond to the major issues in the preamble to that rule.

G. List of Subjects in 42 CFR Part 433

Administrative practice and procedure, Assignment of Rights, Claims, Contracts (Agreements), Cost allocation, Federal financial participation, Federal matching provision, Grant-in-Aid program—health, Mechanized Claims Processing and Information Retrieval Systems, Medicaid, State fiscal administration, Third party liability.

42 CFR Part 433, Subpart C is amended as set forth below:

PART 433—STATE FISCAL ADMINISTRATION

1. The authority citation for Part 433, Subpart C continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. The table of contents for Part 433 is amended by revising the titles of §§ 433.112, 433.120, and 433.121 as follows:

* * * * *

Subpart C—Mechanized Claims Processing and Information Retrieval Systems

* * * * *

433.112 FFP for design, development, or installation of mechanized claims processing and information retrieval systems.

* * * * *

433.120 Procedures for reduction of FFP after reapproval review.

433.121 Reconsideration of the decision to reduce FFP after the review.

* * * * *

3. In § 433.111 paragraphs (a) and (b) are revised to read as follows:

§ 433.111 Definitions.

For purposes of this section:

(a) The following terms are defined at 45 CFR Part 95, Subpart F § 95.605:

"Advance Planning Document"; "Design" or "System Design"; "Development"; "Hardware";

"Installation"; "Operation"; and, "Software".

(b) "Mechanized claims processing and information retrieval system" or "system" means the system of software and hardware used to process Medicaid claims from providers of medical care and services for the medical care and services furnished to recipients under the medical assistance program and to retrieve and produce service utilization and management information required by the Medicaid single State agency and Federal government for program administration and audit purposes. The system consists of (1) required subsystems specified in the State Medicaid Manual; and (2) HCFA-required changes to the required system or subsystem that are published in accordance with § 433.123 of this subpart and specified in the State Medicaid Manual.

* * * * *

4. In § 433.112, the title and paragraph (a) are revised, the introductory language of paragraph (b) is republished for the convenience of the reader, paragraph (b)(6) is revised, and paragraph (c) is added to read as follows:

§ 433.112 FFP for design, development, or installation of mechanized claims processing and information retrieval systems.

(a) FFP is available at the 90 percent rate in State expenditures for the design, development, or installation of a mechanized claims processing and information retrieval system only if the APD is approved by HCFA prior to the State's expenditures of funds for these purposes.

(b) HCFA will approve the system described in the APD if the following conditions are met:

(6) The Department has a royalty free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use and authorize others to use, for Federal government purposes, software, modifications to software, and documentation that is designed, developed, or installed with 90 percent FFP.

(c) Eligibility determination systems are not eligible for either 90 percent or 75 percent FFP under this subpart.

5. In § 433.113, the introductory language of paragraph (a) is republished for the convenience of the reader and paragraph (a)(2) is revised as follows:

§ 433.113 Reduction of FFP for failure to operate a system and obtain initial approval.

(a) Except as waived under § 433.130 or 433.131, FFP will be reduced as specified in paragraph (b) of this section unless the Medicaid agency has in continuous operation a mechanized claims processing and information retrieval system that meets the following conditions:

(2) The system is operational by September 30, 1985; and

6. Section 433.119 is revised as follows:

§ 433.119 Conditions for reapproval; notice of decision.

(a) HCFA will review at least once every three years each system operation initially approved under § 433.114 and reapprove it for FFP at 75 percent of expenditures if the following conditions are met:

(1) The system meets the conditions of § 433.112(b) (1), (3), (4), and (7) through (9).

(2) The system meets the conditions of § 433.116(d) through (h).

(3) The system meets the performance standards for reapproval and the system requirements in Part 11 of the State Medicaid Manual as periodically amended.

(b) HCFA may review an entire system operation or focus its review on parts of the operation. However, at a minimum, HCFA will review standards, system requirements and other conditions of reapproval that have demonstrated weaknesses in a previous review or reviews.

(c) HCFA will issue to each Medicaid agency, by the end of the first quarter after the fiscal year of the review, a written notice informing the agency whether its system is reapproved or disapproved. If the system is disapproved, the notice will also include—

(1) HCFA's decision to reduce FFP for system operations, and the percentage to which it is reduced, beginning with the next calendar quarter;

(2) The findings of fact upon which the determination was made; and

(3) A statement that State claims in excess of the reduced FFP rate will be disallowed and that any such disallowance will be appealable to the Grant Appeals Board.

7. Section 433.120 is amended by revising the title and paragraph (a) to read as follows:

§ 433.120 Procedures for reduction of FFP after reapproval review.

(a) If HCFA determines after the reapproval review that the system no longer meets the conditions of reapproval in § 433.119, HCFA will reduce FFP for system operations for at least four quarters. However, no system will be subject to reduction of FFP for at least the first four quarters after the quarter in which the system is initially approved as eligible for 75 percent FFP.

(8) Section 433.121 is amended by revising the title and paragraph (a) to read as follows:

§ 433.121 Reconsideration of the decision to reduce FFP after the reapproval review.

(a) The agency may appeal to the Departmental Grant Appeals Board, under 45 CFR Part 16, a disallowance concerning a reduction in FFP claimed for system operation caused by a disapproval of the State's system. If the Board finds such a disallowance to be appropriate, the discretionary determination to reduce FFP by a particular percentage amount (instead of by a lesser percentage) is not subject to review by the Board unless the percentage reduction exceeds the range authorized by section 1903(r)(4)(B) of the Act.

9. Section 433.122 is revised as follows:

§ 433.122 Reapproval of a disapproved system.

When FFP has been reduced under § 433.120(a), and HCFA determines upon subsequent review that the system meets all current performance standards, system requirements and

other conditions of reapproval, the following provisions apply:

(a) HCFA will resume FFP in expenditures for system operations at the 75 percent level beginning with the quarter following the review determination that the system again meets the conditions of reapproval.

(b) HCFA may retroactively waive a reduction of FFP in expenditures for system operations if HCFA determines that the waiver could improve the administration of the State Medicaid plan. However, HCFA cannot waive this reduction for any quarter immediately preceding the quarter in which HCFA issues the determination (as part of the review process) stating that the system is reapproved.

§ 433.131 [Amended]

10. Section 433.131 is amended by replacing the term "MMIS" with the word "system".

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance)

Dated: March 8, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: June 6, 1988.

Otis B. Bowen,

Secretary.

[FR Doc. 88-18149 Filed 8-10-88; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 672 and 675

Groundfish of the Gulf of Alaska and Groundfish of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), Commerce.

ACTION: Notice of availability of amendments to the fishery management plans and request for comments.

SUMMARY: NOAA issues this notice that the North Pacific Fishery Management Council (Council) has submitted Amendment 12 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Area and Amendment 17 to the FMP for Groundfish of the Gulf of Alaska for Secretarial review and is requesting comments from the public. Copies of the amendments may be obtained from the address below.

DATE: Comments on the plan amendments should be submitted on or before October 6, 1988.

ADDRESSES: All comments should be sent to James Brooks, Acting Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, AK 99802.

Copies of the amendments, the environmental assessment and the regulatory impact review and initial regulatory flexibility analysis are available upon request from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter or Ronald J. Berg (NMFS, Alaska Region), 907-586-7230.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) requires that each regional fishery management council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. This act also requires that

the Secretary, upon reviewing the plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the plan or amendment.

Amendment 12 will make the following changes to the Bering Sea and Aleutian Islands FMP: (1) Require all floating processors receiving groundfish caught in the exclusive economic zone (EEZ) to obtain Federal permits and report catch weekly; (2) establish an administrative framework procedure for setting joint venture and foreign prohibited species catch limits for groundfish species that are fully U.S. utilized; (3) incorporate a technical change by removing the July 1 deadline for the annual Resource Assessment Document; and (4) require a separate category for rock sole in the annual specifications of total allowable catch.

Amendment 17 to the Gulf of Alaska FMP will modify the FMP and implementing regulations regarding floating processor permit/reporting requirements in the same way as described above in (1) for the Bering Sea and Aleutian Islands FMP.

Regulations proposed by the Council and based on this amendment are scheduled to be published within 15 days.

List of Subjects

50 CFR Part 611

Fisheries, Foreign fishing.

50 CFR Part 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: August 8, 1988.

Joe P. Clem,

Acting Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-18213 Filed 8-8-88; 4:58 pm]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 53, No. 155

Thursday, August 11, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Amendment to the Caribbean Land and Resource Management Plan, Caribbean National Forest

AGENCY: Forest Services, USDA.

ACTION: Change in availability date of draft and final supplements to final environmental impact statement.

SUMMARY: This notice revises the availability dates of the Draft and Final Supplements to the Final Environmental Impact Statement on the Caribbean National Forest Land and Resource Management Plan filed in February 1986.

DATES: The Draft Supplement to the Final Environmental Impact Statement will be available in December 1988 as opposed to the June 1988 date published in the December 8, 1987, *Federal Register*, Volume 52, page 46515. The Final Supplement to the Final Environmental Impact Statement will be available in June 1989 as opposed to the December 1988 date published.

FOR FURTHER INFORMATION CONTACT: Bernie Rios, Forest Supervisor, Caribbean National Forest, Call Box 25000, Rio Piedras, Puerto Rico 00928-2500.

Date: August 4, 1988.

Robert B. Erickson,
Deputy Regional Forest.

[FR Doc. 88-18129 Filed 8-10-88; 8:45 am]

BILLING CODE 3410-11-M

Base Indexes for 9 Timber Species

AGENCY: Forest Service, USDA.

ACTION: Notice; adoption of adjusted lumber base price indexes.

SUMMARY: The Forest Service hereby gives final notice of its intent to adjust lumber base price indexes for certain species of Western timber. The need for adjustment arises from modifications to index logs released by the Western Wood Products Association. Adjustments for each of the 9 affected species are displayed in Table I.

EFFECTIVE DATE: New indexes become effective upon publication of July data by the Western Wood Products Association, which should occur during the first 10 days of August 1988.

FOR FURTHER INFORMATION CONTACT: Jim Pharo, Timber Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090, or call (202) 475-3756.

SUPPLEMENTARY INFORMATION: On April 7, 1988 (53 FR 11527) the Forest Service gave notice of its intent to adjust the base price indexes for 9 species of Western timber. These indexes, published monthly by the Western Wood Products Association (WWPA), are derived by dividing total volume sold by timber species and grade into the total dollars received for the timber products. WWPA provides average monthly estimates of sawtimber value according to industry manufacturing practice.

The WWPA monitors index logs by comparing monthly receipts with monthly lumber price indexes. The Forest Service audits WWPA lumber price index procedures to ensure they properly reflect market end product and timber selling prices. Lumber price indexes are used by Government agencies to appraise public timber offered for sale and to adjust stumpage rates for timber already under contract. Sales with stumpage rate adjustments in their contract are called "escalated sales." Index log changes require

adjustments of the base index in escalated sales.

The Western Wood Products Association will replace current index logs for Pacific Northwest Douglas Fir and Hem-Fir, Coast Inland North Ponderosa Pine, Rocky Mountain Ponderosa Pine, Idaho White Pine, Sugar Pine, White Fir, Inland Dry Douglas Fir-Larch, and White Woods with new indexes based upon 1985-1986 product recovery studies.

No responses were received during the comment period. Late responses received after the comment period requested a separate Douglas Fir index for northern California sales.

At this time the Agency is not prepared to make such an adjustment. Accordingly, the Inland North Douglas Fir-Larch index will continue to apply to northern California sales. The agency will continue to consider whether a separate index is appropriate for northern California and will publish a separate proposal on this topic in the *Federal Register* at a later date.

Replacement Index Implementation

The Forest Service is adopting the new adjustment factors as proposed on April 7. The 24-month period, January 1986 through December 1987, is appropriate to establish adjustments for replacing old base indexes in existing contracts with new, 1985-1986 base indexes. Adjustments to old base indexes, using the appropriate factor from Table I, will be applied as follows:

New Base Index = (Present Contract Base Index Plus the Appropriate Adjustment Factor from Table I)

Transitions will be made to the new base index for the third quarter of calendar year 1988. New sale offerings advertised after November 4, 1988 will use the new base index. Holders of existing contracts are being notified of these changes in writing by the appropriate Forest Service official.

Date: July 28, 1988.

George M. Leonard
Associate Chief.

TABLE I:—24-MONTH INDEX ADJUSTMENT FACTORS

[To be implemented by USDA, Forest Service]

Species/index log basis/adjustment factor	Thousands of board feet	Value in dollars	Dollars per thousand board feet
Pacific Northwest Coast Douglas Fir:			
1985-86 basis.....	8,439,360	\$1,923,278,304	\$227.89
1978-79 basis.....	8,439,360	2,034,658,905	-241.09
Adjustment factor.....			-13.20
Pacific Northwest Hem-Fir:			
1985-86 basis.....	2,343,260	493,801,958	210.73
1978-79 basis.....	2,343,260	489,193,683	-208.77
Adjustment factor.....			+1.96
Coast Inland North Ponderosa Pine:			
1985-86 basis.....	5,122,197	2,236,991,347	436.73
1975-76 basis.....	4,684,303	1,978,254,402	-422.32
Adjustment factor.....			+14.41
Rocky Mountain Ponderosa Pine:			
1985-86 basis.....	1,302,474	394,948,330	303.23
1975-76 basis.....	1,142,160	370,043,225	-323.99
Adjustment factor.....			-20.76
Idaho White Pine:			
1985-86 basis.....	209,421	95,176,536	454.48
1971 basis.....	194,732	79,630,799	-408.93
Adjustment factor.....			+45.55
Sugar Pine:			
1985-86 basis.....	2,580,651	1,370,920,000	531.23
1977-78 basis.....	2,414,162	1,353,564,987	-560.68
Adjustment factor.....			-29.45
White Fir:			
1985-86 basis.....	3,215,983	698,788,867	217.29
1971 basis.....	2,532,547	544,643,429	-215.06
Adjustment factor.....			+2.23
Inland North Douglas Fir—Larch:			
1985-86 basis.....	3,421,402	743,708,440	217.37
1971 basis.....	3,349,241	743,921,517	-222.12
Adjustment factor.....			-4.75
White Woods:			
1985-86 basis.....	2,324,474	508,158,934	218.61
1974-75 basis.....	2,198,589	458,013,525	-208.32
Adjustment factor.....			+10.29

[FR Doc. 88-18212 Filed 8-10-88; 8:45 am]
BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-028]

Roller Chain, Other Than Bicycle, From Japan; Tentative Determination To Revoke Antidumping Finding in Part

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of tentative determination to revoke antidumping finding in part.

SUMMARY: The Department of Commerce has tentatively determined to revoke in part the antidumping finding

on roller chain, other than bicycle, from Japan with respect to two manufacturers.

Interested parties are invited to comment on this tentative determination to revoke in part.

EFFECTIVE DATE: April 1, 1983.

FOR FURTHER INFORMATION CONTACT: Edward Haley or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:**Background**

On May 13, 1987, the Department of Commerce ("the Department") published in the Federal Register (52 FR 18004) the final results of its administrative review of the antidumping finding on roller chain,

other than bicycle, from Japan (38 FR 9926, April 12, 1973). In those results the Department announced its intent to publish separately a tentative determination to revoke the antidumping finding in part with respect to several Japanese firms.

Tentative Determination To Revoke in Part

Daido Kogyo Co., Ltd. and Enuma Chain Manufacturing Co., Ltd. requested in writing a revocation of the finding. The Department has concluded that sales by these firms were made at not less than fair value for the period from April 1, 1981 through March 31, 1983. As provided for in § 353.54(e) of the Commerce Regulations, these firms have agreed in writing to an immediate suspension of liquidation and reinstatement in the finding under circumstances specified in the written

agreement. Therefore, we tentatively determine to revoke the antidumping finding on roller chain, other than bicycle, from Japan with regard to Daido Kogyo Co., Ltd. and Enuma Chain Manufacturing Co., Ltd. If this partial revocation is made final, it will apply to all unliquidated entries of roller chain, other than bicycle, manufactured by Daido Kogyo Co., Ltd. or Enuma Chain Manufacturing Co., Ltd. and entered, or withdrawn from warehouse, for consumption on or after April 1, 1983.

This tentative determination to revoke in part is not necessarily indicative of the Department's final decision on revocation. That decision will be reached only after careful consideration of all relevant information during the course of an administrative review of a more recent period.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs are rebuttals to written comments, limited to issues raised in those comments. Rebuttal briefs may be filed not later than 32 days after the date of publication. The Department will publish the results of its analysis of any such comments or hearing.

This tentative determination to revoke in part and notice are in accordance with section 751(c) of the Tariff Act (19 U.S.C. 1675(c)) and 19 CFR 353.54.

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: August 3, 1988.

[FR Doc. 88-18205 Filed 8-10-88; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council's Administrative Committee will convene a public meeting on August 19, 1988, at 3 p.m., at the Council's office (address below), to discuss issues related to the Committee's regular administrative operations.

FOR FURTHER INFORMATION CONTACT:

The Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, PR 00918-2577; (809) 753-4926.

Date: August 5, 1988.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-18217 Filed 8-10-88; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Select Group (GSG) will convene a public meeting on August 23, 1988, at 8 a.m., at the Pacific Marine Fisheries Commission, Conference Room, Suite 1C, 2075 SW. First Avenue, Portland, OR, to address the issue of sablefish allocation and the development of management alternatives for the 1989 sablefish fisheries. The GSG will review available data pertaining to catch, fish abundance, and economics of the various fisheries, and review options presented by GSG members and the public. The public meeting will adjourn on August 24.

FOR FURTHER INFORMATION CONTACT:

Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, 2000 SW. First Avenue, Suite 420, Portland, OR 97201; telephone: (503) 221-6352.

Date: August 5, 1988.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-18218 Filed 8-10-88; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council, its Committees, and its Habitat and Environmental Protection Advisory Panel will convene public meetings at the South Atlantic Fishery Management Council's office (address below), as follows:

South Atlantic Council and its Committees—will convene August 29, 1988, to discuss red drum, king and Spanish mackerel, large pelagics, law enforcement, and other fishery management business. Also during the Council's public meeting, elections will

be conducted for chairman and vice-chairman for the coming year, and a closed session (not open to the public) will be convened to discuss personnel matters. The public meeting will adjourn on September 1, 1988. A detailed agenda will be available to the public on or about August 12. For further information contact Carrie R.F. Knight, Public Information Specialist, South Atlantic Fishery Management Council (address below). *Habitat and Environmental Protection Advisory Panel*—The South Atlantic Council will convene a public meeting on August 16, 1988, at 1 p.m., of its Habitat and Environmental Protection Advisory Panel. This will be the first meeting of this panel and will serve as an orientation and organizational meeting. Panel members will also discuss existing and/or anticipated habitat problems of their individual states, as well as of the South Atlantic region. The public meeting will recess at 5 p.m., reconvene on August 17 at 8:30 a.m., and adjourn at 12:30 p.m. A detailed agenda will be available to the public on or about August 3. For further information contact Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571-4366.

Date: August 5, 1988.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-18219 Filed 8-10-88; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Notice of a Call For Proposals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

The North Pacific Fishery Management Council (Council) invites proposals for regulation of the halibut fishery off Alaska. The Council has established an annual amendment cycle in close coordination with the International Pacific Halibut Commission (IPHC) and will be responsible for socioeconomic and allocative decisions affecting the fishery. The IPHC will continue its responsibility for biological and conservation management decisions, including setting quotas and seasons.

At its September 26-30, 1988, meeting at the Anchorage Sheraton Hotel, the Council will review proposals submitted in response to this call. Final action will be taken at the December 5-9, 1988, Council meeting in Anchorage.

Proposals should include the following: A brief statement of the proposal, objectives of the proposal, justification for Council action, foreseeable impacts of the proposal, supporting data, and other relevant information. Proposals should be submitted by September 15, 1988, to the North Pacific Fishery Management Council at the address below. Proposal forms with additional information are available from the Council office.

FOR FURTHER INFORMATION CONTACT: Ron Miller, Special Advisor, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; (907) 271-2809.

Dated: August 8, 1988.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-18216 Filed 8-10-88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Negotiated Settlement for Certain Man-Made Fiber Textile Products Produced or Manufactured in Hong Kong

August 5, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 23, 1982, as amended.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION: On April 19, 1988, a notice was published in the *Federal Register* (53 FR 12803) announcing that the Government of the United States had requested consultations with the Government of Hong Kong with respect to stable artificial fabric in Category 611.

The purpose of this notice is to announce that consultations were held June 16-17, 1988 on Category 611 and a limit of 5,581,287 square yards was established for 1988.

A copy of the current agreement is available from the Textiles Division,

Economic Bureau, U.S. Department of State, (202) 647-1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see *Federal Register* notice 52 FR 47745, published on December 16, 1987).

Ronald L. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-18174 Filed 8-10-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a one year extension of a currently approved information collection concerning Rights in Data and Copyrights.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill, Office of Federal Acquisition and Regulatory Policy, (202) 523-3856 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697-7268.

SUPPLEMENTARY INFORMATION: a. *Purpose:* Rights in Data and Copyrights is a regulation which concerns the rights of the Government and organizations with which the Government contracts to information developed under such contracts. The delineation of such rights is necessary in order to protect the contractor's rights to not disclose proprietary data, and to ensure that data developed with public funds is available to the public.

b. *Annual reporting burden:* The annual reporting burden is estimated as

follows: Respondents, 1,100; responses per respondent, 1; total annual responses 1,100; hours per response, 2.7 and total burden hours, 2,970.

c. *Annual recordkeeping burden:* The annual recordkeeping burden is estimated as follows: Recordkeepers, 9,000; hours per recordkeeper, 3; and total recordkeeping burden hours, 27,000.

Obtaining Copies of Proposals: Requesters may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0090, Rights in Data and Copyrights.

Dated: August 1, 1988.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 88-18131 Filed 8-10-88; 8:45 am]

BILLING CODE 6820-61-M

Department of the Army

Intent To Prepare a Supplemental Environmental Impact Statement (SEIS) for the Yakima Firing Center (YFC) Land Acquisition; I Corps and Fort Lewis; Fort Lewis, WA

AGENCY: Department of the Army, DOD.

ACTION: Notice of intent.

SUMMARY: 1. *Proposed Action.* Due to advances in weapons systems technology and the associated doctrinal and tactical employment techniques, the Army requires larger expanses of land for troop exercises. At present, YFC does not contain sufficient land for effective live fire gunnery and maneuver training areas. An EIS has been developed to address these needs. Department of the Army is considering changing the structure of the 9th Infantry Division (MTZ), which is currently a Motorized Division. One of the potential force structure scenarios calls for converting this Motorized Division into a Mechanized Division. The Army will produce a Supplemental EIS (SEIS) to assess the impact of these possible changes in structure on YFC.

2. *Alternatives.* Alternatives to the proposed expansion of YFC will be examined in the SEIS. A river crossing site is being examined with the expressed purpose of selecting sites which will minimize adverse environmental impacts while meeting the needs of the units for a training site.

Point of Contact: Additional information about the proposed action and Supplemental EIS can be obtained by contacting the Fort Lewis Public

Affairs Office: Mr. George Polich, Deputy Public Affairs Officer, HQ, I Corps and Fort Lewis, ATTN: AFZH-PO, Fort Lewis, WA 98488-5000, Telephone: (206) 967-5014.

Dated: August 8, 1988.

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health OASA(1&L).

[FR Doc. 88-18156 Filed 8-10-88; 8:45 am]

BILLING CODE 3710-06-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2441-006 et al.]

Hydroelectric Applications (City of Norwich Dept. of Public Utilities et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. *Type of Application:* Amendment to License.

b. *Project No.:* 2441-006.

c. *Date Filed:* March 15, 1988.

d. *Applicant:* City of Norwich Department of Public Utilities.

e. *Name of Project:* Greenville Dam Project.

f. *Location:* New London County, Connecticut.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:*

Mr. Richard DesRoches, City of Norwich Department of Public Utilities, 34 Court House Service, Norwich, CT 06360, (203) 887-2555

Mary A. Heckman, P.C., Lielbriedis, Miller, Balis, & O'Neill, 1101 14th Street, NW., Suite 1400, Washington, DC 20001, (202) 789-1450

i. *FERC Contact:* Mr. John P. Warner, (202) 376-9045.

j. *Comment Date:* September 16, 1988.

k. *Description of Project:* The City of Norwich Department of Public Utilities (licensee) proposes to amend the license to construct upstream and downstream fish passage facilities at the Greenville Dam on the Shetucket River. The proposed facilities include a denil fish ladder, fish screen and bypass sluice with provisions for future installation of a fish lift. The licensee proposes to modify project operation to release a 250 cubic feet per second minimum flow to the bypass reach. The licensee also proposes to extend the term of the license for 20 years, until April 1, 2012.

l. *Purpose of Project:* The proposed fish passage facilities would allow for the restoration of anadromous fish to the Thames River Basin including the Shetucket River. The proposed license term extension would allow for the funding of the proposed facilities and operational charges.

m. This notice also consists of the following standard paragraphs: B, C, & D2.

2 a. *Type of Application:* Amendment to License.

b. *Project No.:* 2508-000.

c. *Date Filed:* March 15, 1988.

d. *Applicant:* City of Norwich Department of Public Utilities.

e. *Name of Project:* Tenth Street Station.

f. *Location:* New London County, Connecticut.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:*

Mr. Richard DesRoches, City of Norwich Department of Public Utilities, 34 Court House Service, Norwich, CT 06360, (203) 887-2555

Mary A. Heckman, P.C., Lielbriedis, Miller, Balis, & O'Neill, 1101 14th Street, NW., Suite 1400, Washington, DC 20001, (202) 789-1450

i. *FERC Contact:* Mr. John P. Warner, (202) 376-9045.

j. *Comment Date:* September 16, 1988.

k. *Description of Project:* The City of Norwich Department of Public Utilities (licensee) proposes to amend the license to extend the term of the license for 20 years, until April 1, 2012.

l. *Purpose of Project:* The proposed license term extension would allow for the funding of upstream and downstream fish passage facilities, and the release of a 250 cubic feet per second minimum by-pass flow from the Greenville Dam Project, FERC No. 2441.

m. This notice also consists of the following standard paragraphs: B, C, & D2.

3 a. *Type of Filing:* Transfer of License.

b. *Project No.:* 4669-007.

c. *Date:* July 11, 1988.

d. *Applicants:* John L. Symons and Rancho Riata Hydro Partners, Inc.

e. *Name of Project:* Rancho Riata Project.

f. *Location:* On Bishop Creek near the town of Bishop, in Inyo County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contacts:*

John H. Tait, Chief Executive Officer, Rancho Riata Hydro Partners, Inc., 5330 Primrose Drive, Suite 119, Fair Oaks, CA 95628, (916) 966-5141

John L. Symons, 2800 Audrey Lane, Bishop, CA 93514, (619) 873-4447

i. *FERC Contact:* Thomas Dean, (202) 376-9562.

j. *Comment Date:* September 15, 1988.

k. *Description of Application:* John L. Symons (transferor) proposes to transfer his license issued on January 20, 1988, to Rancho Riata Hydro Partners, Inc. (transferee) in order to facilitate the financing of the licensed project. The transferee is a corporation organized under the General Corporation Law of California. The transferee states that it will comply with all applicable State laws as required by section 9(b) of the Federal Power Act.

l. This notice also consists of the following standard paragraphs: B and C (except for notice of intent to file competing application and competing application filings, which are not applicable to transfer of license applications).

4 a. *Type of Application:* Major License (Over 5 MW).

b. *Project No.:* 8144-003.

c. *Date Filed:* August 28, 1987.

d. *Applicant:* Amador County.

e. *Name of Project:* Devils Nose/Cross County.

f. *Location:* On the North Fork and main stem of the Mokelumne River, within the El Dorado and Stanislaus National Forests and lands administered by the Bureau of Land Management, in Amador and Calaveras Counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Contact Person:* Roderick E. Schuler, Director, Water Resources, Amador County, 108 Court Street, Jackson, CA 95642 (209) 223-6394.

i. *FERC Contact:* Hector M. Perez, (202) 376-1669.

j. *Comment Date:* September 30, 1988.

k. *Description of Project:* The proposed Devil's Nose development would consist of: (1) A 47-foot-high concrete-faced rockfill dam with a crest elevation of 3,070 feet; (2) an ungated ogee spillway located on the right abutment with a crest elevation of 3,030 feet; (3) a reservoir with a usable storage capacity of 136,713 acre-feet and a surface area of 1,056 acres at a normal maximum pool elevation of 3,030 feet; (4) a 2,280-foot-long, 28-foot-diameter horseshoe-shaped tunnel through the right abutment and under the spillway for construction diversion and then for outlet flow releases; (5) a 24-inch-diameter steel penstock conveying minimum flow releases along the outlet tunnel invert; (6) A 35-foot by 30-foot-long auxiliary powerhouse at elevation

2,600 feet containing a 1.2-MW turbine generator unit; (7) a 50-foot-long tailrace discharging into North Fork Mokelumne River; (8) a 12,000-foot-long, 12-foot-diameter power tunnel bifurcating from the main outlet and connecting to a 375-foot-long, 8-foot-diameter penstock; (9) a 65-foot by 75-foot concrete powerhouse at elevation 2,315 feet containing a 41-MW Francis turbine-generator unit; (10) a 50-foot-long tailrace discharging into the Tiger Creek afterbay; (11) A 3.1-mile-long, 4.16-kV transmission line from the auxiliary powerhouse to the main powerhouse substation and a 0.2-mile-long, 230-kV transmission tie-in to the Pacific Gas and Electric Company's (PG&E) Tiger Creek powerhouse substation; and (12) appurtenant facilities. The applicant estimates an average annual generation of 80.19 GWh. The estimated cost of the Devil's Nose development is \$183,371,000.

The proposed Cross County development would consist of: (1) A gated intake structure with trashracks diverting water from the Tiger Creek afterbay; (2) a 59,000-foot-long, 12-foot-diameter power tunnel with a 540-foot-long, 15-foot-diameter surge shaft; (3) a 4,600-foot-long, 7.5-foot-diameter steel penstock; (4) a 58-foot by 76.5-foot concrete powerhouse at elevation 677 feet containing a 79.0-MW Pelton turbine-generator unit; (5) a 80-foot-long tailrace channel discharging into North Fork Mokelumne River; (6) A 0.5-mile-long, 230-kV transmission line connecting to the PG&E Electra Powerhouse substation; and (7) appurtenant facilities. The applicant estimates an average annual generation of 114.28 GWh. the estimated cost of the Cross County development is \$94,344,000.

The total power output from both developments would be sold to PG&E.

l. This notice also consists of the following standard paragraphs A3, A9, B, and C.

5 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P-10603-000.

c. *Date Filed:* May 10, 1988.

d. *Applicant:* Wolverine Power Corporation.

e. *Name of Project:* Smallwood Hydro Project.

f. *Location:* On the Tittabawassee River in Gladwin County, Michigan.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contacts:*

Mr. Carl Schilling, P.O. Box 689, 1600 Center Ave., Bay City, MI 48707, (517) 893-5995

Mr. Louis Rosenman, 1333 New Hampshire Ave., NW., Suite 1100, Wash., DC 20036, (202) 457-7500

i. *FERC Contact:* Ed Lee, (202) 376-9116.

j. *Comment Date:* October 3, 1988.

k. *Description of Project:* The existing project consists of: (1) A masonry dam approximately 1,025-foot-long and 28-foot-high; (2) a 500-acre reservoir having a storage capacity of 6,000 acre-feet; (3) a reinforced concrete powerhouse integral with the dam and housing one 1.2-MW generator with an average annual generation of 2,650 MWh; (4) a circuit breaker bus that feeds to a bank of transformers owned by the Applicant; and (5) appurtenant facilities. The Applicant estimates the cost of the work to be performed under the preliminary permit would be \$45,000. All project works and lands are owned by the Applicant.

l. *Purpose of Project:* The generated power is sold by the Applicant to Consumers Power Company.

m. This notice consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

6 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10604-000.

c. *Date Filed:* May 11, 1988.

d. *Applicant:* City of Boulder.

e. *Name of Project:* Boulder III.

f. *Location:* On the Silver Lake, Island Lake, Tripple Lakes (Nos. 1-3), Lake Albion, Green Lakes (Nos. 1-5), Lakewood Reservoir, North Boulder Creek, and unnamed lakes and streams within the North Boulder Basin Watershed, in Boulder County, Colorado.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contacts:* Eva June Busse, Hydro Projects Manager, City of Boulder, P.O. Box 791, Boulder, CO 80306, (303) 441-3205.

i. *FERC Contact:* Héctor Pérez, (202) 376-1669.

j. *Comment Date:* October 3, 1988.

k. *Description of Project:* The city of Boulder proposes to study the feasibility of developing hydropower potential of its municipal water supply system within the North Boulder Basin Watershed by retrofitting its existing water transmission facilities with electrical generation equipment. Project energy would be sold to the Public Service Company of Colorado.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

7 a. *Type of Application:* Request for an Extension of Term of License.

b. *Project No.:* 2543-012.

c. *Date Filed:* September 26, 1985.

d. *Applicant:* The Montana Power Company.

e. *Name of Project:* Milltown Dam Hydroelectric Project.

f. *Location:* On the Clark Fork River, near Milltown, Missoula County, Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* G. Howard Van Noy, 40 East Broadway, Butte, MT 59701, (406) 723-5421.

i. *FERC Contact:* Ed Melisky, (202) 376-9255.

j. *Comment Date:* September 16, 1988.

k. *Description of Request:* In an application for amendment of license filed with the Commission on September 26, 1985, the Montana Power Company (licensee) requested that the Commission extend the term of the license for the Milltown Dam Hydroelectric Project. The license, which was issued on June 3, 1968, had a termination date of December 31, 1993. The licensee requests that the Commission change that termination date to December 31, 2015. This notice is being issued to inform interested parties that the Commission will now consider the licensee's request to extend the term of the license.

l. This notice also consists of the following standard paragraphs: B, C, & D2.

8 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10081-000.

c. *Date Filed:* September 12, 1986.

d. *Applicant:* County of Tuolumne and Turlock Irrigation District.

e. *Name of Project:* Clavey River Project.

f. *Location:* On the Clavey River, near the town of Sonora, within the Stanislaus National Forest, in Tuolumne County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. John S. Mills, Project Director, Tuolumne County Administration Center, 2 South Green Street, Sonora, CA 95370, (209) 533-5700.

i. *FERC Contact:* Thomas Dean, (202) 376-9562.

j. *Comment Date:* September 30, 1988.

k. *Competing Application:* Project No. 9990-000, Date Filed: May 9, 1986.

l. *Description of Project:* The proposed project would consist of: (1) A 400-foot-high, 1,500-foot-long dam with a crest elevation of 4,390 feet msl; (2) a reservoir with a gross storage capacity of 90,000 acre-feet and a surface area of 600 acres at elevation 4,370 feet msl; (3) a 100-foot-high, 300-foot-long

reregulating dam with a crest elevation of 1,390 feet msl; (4) a reregulating reservoir with a gross storage capacity of 400 acre-feet and a surface area of 12 acres at elevation 1,370 feet msl; (5) a 15-foot-high, 100-foot-long Hull Creek diversion dam with a crest elevation of 4,400 feet msl; (6) a 15-foot-high, 200-foot-long Reed Creek diversion dam with a crest elevation of 4,900 feet msl; (7) an 8-foot-diameter, 0.7-mile-long Hull Creek diversion tunnel; (8) an 8-foot-diameter, 1-mile-long Reed Creek diversion tunnel; (9) an 11-foot-diameter, 46,000-foot-long unlined penstock; (10) a 9-foot-diameter 8,600-foot-long lined penstock; (11) a powerhouse containing 2 generating units with a combined capacity of 120 MW operating under a head of 3,000 feet; and (12) a 45-mile-long, 230-kV transmission line.

The applicant estimates the average annual energy production to be 300 GWh. The approximate cost of the studies under the permit would be \$1,200,000.

m. *Purpose of Project:* Applicant intends to sell the power generated from the proposed facility.

n. This notice also consists of the following standard paragraphs: A10, B & C.

a. *Type of Application:* Transfer of License.

b. *Project No.:* 1473-004.

c. *Date Filed:* April 29, 1988.

d. *Applicant:* Montana Power Company (Licensee) and Granite County, Montana (Transferee).

e. *Name of Project:* Flint Creek.

f. *Location:* At Georgetown Lake within the Deerlodge National Forest near Anaconda in Deer Lodge and Granite Counties, Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Larry Thompson, 40 East Broadway Street, Butte, MT 59701, (406) 723-5421.

i. *FERC Contact:* Julie Bernt, (202) 376-1936.

j. *Comment Date:* September 19, 1988.

k. *Description of Project:* The original Flint Creek development was started in 1890 and full-time operation was begun by the Montana Water, Electric Power and Mining Company in 1901. On January 25, 1940, Montana Power Company received a license to operate the project. Montana Power Company proposes to transfer the license to Granite County, Montana, and is not interested in obtaining a new license for the site.

The licensee certifies that it has fully complied with the terms and conditions of its license and obligates itself to pay all annual charges accrued under the

license to the date of transfer. The transferee accepts all the terms and conditions of the license and agrees to be bound thereby to the same extent as though it were the original licensee.

l. This notice also consists of the following standard paragraphs: B and C (except for notice of intent to file competing applications and competing application filings which are not applicable to transfer of license applications).

a. *Type of Application:* Amendment to License.

b. *Project No.:* 2508-000.

c. *Date Filed:* March 15, 1988.

d. *Applicant:* City of Norwich Department of Public Utilities.

e. *Name of Project:* Tenth Street Station.

f. *Location:* New London County, Connecticut.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r)

h. *Applicant Contact:*

Mr. Richard DesRoches, City of Norwich Department of Public Utilities, 34 Court House Service, Norwich, CT 06360, (203) 887-2555

Mary A. Heckman, P.C., Lielbriedis, Miller, Balis, O'Neill, 1101 14th Street, NW., Suite 1400, Washington, DC 20001, (202) 789-1450

i. *FERC Contact:* Mr. John P. Warner, (202) 376-9045.

j. *Comment Date:* September 16, 1988.

k. *Description of Project:* The City of Norwich Department of Public Utilities (licensee) proposed to amend the license to extend the term of the license for 20 years, until April 1, 2012.

l. *Purpose of Project:* The proposed license term extension would allow for the funding of upstream and downstream fish passage facilities, and the release of a 250 cubic feet per second minimum bypass flow from the Greenville Dam Project, FERC No. 2441.

m. This notice also consists of the following standard paragraphs: B, C, and D2.

11 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10618-000.

c. *Date Filed:* June 16, 1988.

d. *Applicant:* Monterey County Flood Control and Water Conservation District.

e. *Name of Project:* San Antonio Hydroelectric Project.

f. *Location:* On the San Antonio River in Monterey County, California.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* William F. Hurst, Monterey County Flood Control and Water Conservation District, 855

East Laurel Drive, Building G, Salinas, California 93905, (408) 424-0866.

i. *FERC Contact:* Nanzo Coley, (202) 376-9416.

j. *Comment Date:* September 28, 1988.

k. *Competing Application:* Project No. 10581-000. Date Filed: April 24, 1988. Due Date: September 28, 1988.

l. *Description of Project:* The existing San Antonio dam is owned by the applicant. The proposed project would consist of: (1) An existing dam that is 217 feet high and 1,470 feet long; (2) an existing reservoir with a surface area of 5,720 acres and a storage capacity of 325,000 acre-feet at elevation 780 feet m.s.l.; (3) an existing 24-foot-diameter by 1,300-foot-long penstock; (4) a proposed 48-foot-diameter by 150-foot-long penstock; (5) a proposed powerhouse containing three generating units rated at 500 KW each; (6) a proposed 20-foot-wide by 30-foot-long tailrace; (7) a proposed 21 KV transmission line; and (8) appurtenant facilities. The estimated average annual energy output for the project is 4,000,000 KWH. The applicant estimates that the cost of the work to be performed under the preliminary permit would be \$80,000.

m. *Purpose of Project:* Energy produced at the project would be sold to Pacific Power and Electric Company.

n. This notice also consists of the following standard Paragraphs: A8, A9, A10, B, C, and D2.

12 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10625-000.

c. *Date Filed:* July 11, 1988.

d. *Applicant:* Kittitas Reclamation District.

e. *Name of Project:* Taneum Chute Hydroelectric.

f. *Location:* At the Taneum Chute on U.S. Bureau of Reclamation land in Kittitas County, Washington. T19N, R17E.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)-825(r).

h. *Applicant Contact:* Mr. LeMoyne C. Henderson, Kittitas Reclamation District, P.O. Box 276, Ellensburg, WA 98926, (509) 925-6158.

i. *FERC Contact:* Mr. James Hunter, (202) 376-1943.

j. *Comment Date:* October 5, 1988.

k. *Description of Project:* The proposed project would consist of: (1) An intake at elevation 2,109 feet on the South Branch Canal; (2) a 42-inch-diameter, 1,300-foot-long steel penstock; (3) a 24-foot-wide, 40-foot-long metal powerhouse adjacent to the Taneum Chute stilling basin, containing 4 identical generating units with a total rated capacity of 760 kW, producing an average annual output of 1.86 GWH; (4)

a tailrace discharging into the stilling basin at elevation 1,905 feet; and (5) a 1,500-foot-long, 33-kV transmission line connecting to the existing Puget Power transmission system. The estimated cost of permit activities is \$18,500.

1. *Purpose of Project:* Project power would be sold.

m. This notice also consists of the following standard Paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A3. *Development Application*—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. *Preliminary Permit*—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for

filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. *Notice of intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original

and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Acting Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203-RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: August 8, 1988.

Washington, DC.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-18148 Filed 8-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ES88-49-000 et al.]

Electric Rate, Small Power Production, and Interlocking Directorate Filings; Centel Corp. et al.

Take notice that the following filings have been made with the Commission:

1. Centel Corporation

[Docket No. ES88-49-000]

August 5, 1988.

Take notice that on August 1, 1988, Centel Corporation filed an application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, seeking authority to extend to not later than December 31, 1991, the final maturity date of short-term indebtedness to be issued not later than December 31, 1990, in an aggregate principal amount at any one time outstanding of \$750 million.

Comment date: August 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. LUZ Solar Partners VIII, Ltd.

[Docket No. QF88-470-000]

August 8, 1988.

On July 26, 1988, LUZ Solar Partners VIII, Ltd. (Applicant), a California Limited Partnership, c/o LUZ

Engineering Corporation, General Partner, 924 Westwood Boulevard, Suite 1000, Westwood, California 90024 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located approximately 12 miles due east of Kramer Junction, California, 25 miles west-northwest of Barstow, California, and six miles north of California Highway 58, on Harper Lake Road. The facility will consist of a solar collector field, a solar-fired preheater/steam generator, a solar-fired superheater, a solar-fired reheat unit, a separate natural gas-fired auxiliary boiler, a natural gas-fired heat transfer fluid heater and a single inlet steam turbine generator. The primary energy source will be solar energy. The net electric power production capacity of the facility will be 80 MW. Potomac Capital Investment Corporation, a wholly-owned subsidiary of Potomac Electric Power Company, an electric utility and subsidiary of CP National Corporation, also an electric utility will have equity interests in the facility. Installation of the facility is expected to commence in March 1989.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

3. LUZ Solar Partners IX, Ltd.

[Docket No. QF88-472-000]

August 8, 1988.

On July 26, 1988, LUZ Solar Partners IX, Ltd. (Applicant), a California Limited Partnership, c/o LUZ Engineering Corporation, General Partner, 924 Westwood Boulevard, Suite 1000, Westwood, California 90024 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located approximately 12 miles due east of Kramer Junction, California, 25 miles west-northwest of Barstow, California, and six miles north of California Highway 58, on Harper Lake Road. The facility will consist of a solar collector field, a solar-fired preheater/steam generator, a solar-fired superheater, a solar-fired reheat unit, a separate natural gas-fired auxiliary boiler, a natural gas-fired heat transfer fluid heater and a single inlet steam

turbine generator. The primary energy source will be solar energy. The net electric power production capacity of the facility will be 80 MW. Potomac Capital Investment Corporation, a wholly-owned subsidiary of Potomac Electric Power Company, an electric utility and subsidiary of CP National Corporation, also an electric utility will have equity interests in the facility. Installation of the facility is expected to commence in Fall 1989.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

4. Tamal Suffolk North

[Docket No. QF88-464-000]

August 8, 1988.

On July 26, 1988, Tamal Suffolk North (Applicant), of Tamal Suffolk North, 80 E. Sir Francis Drake Blvd., Suite 2A, Larkspur, CA 94939 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located at 366 Sheep Pasture Road, Port Jefferson Station, New York, New York 11777. The facility will consist of internal combustion engines fueled by low Btu gas derived from wood waste. The electric power production capacity will be 14 megawatts. Natural gas and diesel oil will be used for startup and backup operations and as pilot fuel.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

5. LUZ Solar Partners X, Ltd.

[Docket No. QF88-469-000]

August 8, 1988.

On July 26, 1988, LUZ Solar Partners X, Ltd. (Applicant), a California Limited Partnership, c/o LUZ Engineering Corporation, General Partner, 924 Westwood Boulevard, Suite 1000, Westwood, California 90024 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located approximately 12 miles due east of Kramer Junction, California, 25 miles west-northwest of Barstow, California, and six miles north of California Highway 58, on Harper Lake Road. The facility will consist of a solar collector field, a solar-fired preheater/

steam generator, a solar-fired superheater, a solar-fired reheat unit, a separate natural gas-fired auxiliary boiler, a natural gas-fired heat transfer fluid heater and a single inlet steam turbine generator. The primary energy source will be solar energy. The net electric power production capacity of the facility will be 80 MW. Potomac Capital Investment Corporation, a wholly-owned subsidiary of Potomac Electric Power Company, an electric utility and subsidiary of CP National Corporation, also an electric utility will have equity interests in the facility. Installation of the facility is expected to commence in Fall 1990.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

6. LUZ Solar Partners XI, Ltd.

[Docket No. QF88-468-000]

August 8, 1988.

On July 26, 1988, LUZ Solar Partners XI, Ltd. (Applicant), a California Limited Partnership, c/o LUZ Engineering Corporation, General Partner, 924 Westwood Boulevard, Suite 1000, Westwood, California 90024 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located approximately 12 miles due east of Kramer Junction, California, 25 miles west-northwest of Barstow, California, and six miles north of California Highway 58, on Harper Lake Road. The facility will consist of a solar collector field, a solar-fired preheater/steam generator, a solar-fired superheater, a solar-fired reheat unit, a separate natural gas-fired auxiliary boiler, a natural gas-fired heat transfer fluid heater and a single inlet steam turbine generator. The primary energy source will be solar energy. The net electric power production capacity of the facility will be 80 MW. Potomac Capital Investment Corporation, a wholly-owned subsidiary of Potomac Electric Power Company, an electric utility and subsidiary of CP National Corporation, also an electric utility will have equity interests in the facility. Installation of the facility is expected to commence in Fall 1991.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

7. LUZ Solar Partners XII, Ltd.

[Docket No. QF88-471-000]

August 8, 1988.

On July 26, 1988, LUZ Solar Partners XII, Ltd. (Applicant), a California Limited Partnership, c/o LUZ Engineering Corporation, General Partner, 924 Westwood Boulevard, Suite 1000, Westwood, California 90024 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located approximately 12 miles due east of Kramer Junction, California, 25 miles west-northwest of Barstow, California, and six miles north of California Highway 58, on Harper Lake Road. The facility will consist of a solar collector field, a solar-fired preheater/steam generator, a solar-fired superheater, a solar-fired reheat unit, a separate natural gas-fired auxiliary boiler, a natural gas-fired heat transfer fluid heater and a single inlet steam turbine generator. The primary energy source will be solar energy. The net electric power production capacity of the facility will be 80 MW. Potomac Capital Investment Corporation, a wholly-owned subsidiary of Potomac Electric Power Company, an electric utility and subsidiary of CP National Corporation, also an electric utility will have equity interests in the facility. Installation of the facility is expected to commence in Fall 1992.

Comment date: Thirty days from publication in the *Federal Register*, in accordance with Standard Paragraph E at the end of this notice.

8. Toledo Edison Company

[Docket No. ER88-541-000]

August 8, 1988.

Take notice that on July 29, 1988, Toledo Edison Company (Toledo Edison) tendered for filing the Fifth Addendum to the Municipal Resale Service Rate Agreement between Toledo Edison and American Municipal Power-Ohio, Inc. (AMP-Ohio). Toledo Edison states that the Fifth Addendum to the Municipal Resale Service Rate Agreement provides for an increase in charges to AMP-Ohio of approximately \$464,000 annually.

Toledo Edison states that such increase is consistent with the provisions of the Municipal Resale Service Rate Agreement and has been agreed upon by AMP-Ohio. Toledo Edison requests waiver of the Commission's regulations in order to

permit the proposed rate increase to become effective on July 1, 1988.

Comment date: August 22, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Ohio Edison Company

[Docket No. ER88-544-000]

August 8, 1988.

Take notice that on August 1, 1988, Ohio Edison Company (Ohio Edison) tendered for filing proposed rates for Full or Partial Requirements Service to twenty-one municipal wholesale customers or to American Municipal Power-Ohio, Inc. (AMP-Ohio) on their behalf, said customers currently taking service through American Municipal Power-Ohio, Inc. (AMP-Ohio) under FERC Rate Schedule No. 150. Ohio Edison also proposes a separate rate for Transmission Service to AMP-Ohio to replace Amendment No. 2 to the Energy Supply Agreement. This filing is pursuant to Article III of the Settlement Agreement among the Company, AMP-Ohio, and the municipal wholesale customers of Ohio Edison (WCOE), as approved by the Commission on March 23, 1984 in Case No. ER80-454, et al., 26 FERC Sec. 61,359, as interpreted by the Commission Order of May 26, 1988 in Docket No. ER88-329-000, 43 FERC ¶ 61,316.

Ohio Edison states that the proposed changes would result in increased revenues of \$18.2 million for Partial Requirements Service to jurisdictional customers based upon data for the twelve month period ending December 31, 1988 as filed herein. The proposed rate for third party Transmission Service results in decrease of \$13,039 for the same time period.

Ohio Edison proposed an effective date of October 1, 1988.

Ohio Edison further states that the reason for the proposed increase is that rates for service to AMP-Ohio on behalf of municipal wholesale customers are no longer just and reasonable, being below the cost of providing service to these customers, inadequate to provide a basis for attracting capital on reasonable terms, and inadequate to provide a return on new generating facilities added in part of serve wholesale customers.

According to Ohio Edison, copies of the filing were served on the Company's jurisdictional customers affected by the proposed changes and the Public Utilities Commission of Ohio.

Comment date: August 22, 1988, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Company of New Mexico

[Docket No. ER88-542-000]

August 8, 1988.

Take notice that on July 29, 1988, Public Service Company of New Mexico (PNM) tendered for filing a Letter of Principles between PNM and Western Area Power Administration (Western) modifying two transmission service contracts between PNM and Western entered into respectively in 1962 and 1978. These two transmission service contracts are also tendered for filing, as are certain letter agreements entered into by PNM and Western in connection with such transmission service contracts. Under the Letter of Principles, Western will provide 50 MW of firm transmission service for PNM between the Westwing and Four Corners points of interconnection. The Letter of Principles also increases the rate for firm transmission service Western pays PNM to \$3.00/kw-month (as reduced by certain agreed modifications), and allows PNM to provide additional firm transmission service for Western on a seasonal basis.

PNM requests waiver of the Commission's notice requirements to permit the Letter of Principles, the two transmission contracts and the associated letter agreements to become effective upon their respective effective dates as agreed to by the parties.

Copies of the filing have been served upon Western and the New Mexico Public Service Commission.

Comment date: August 22, 1988, in accordance with Standard Paragraph E at the end of this notice.

11. Pennsylvania Power & Light Company

[Docket No. ER88-545-000]

August 8, 1988.

Take notice that on August 1, 1988, Pennsylvania Power & Light Company (PP&L) tendered for filing proposed changes in its Rate Schedule FERC Nos. 28, 32, 45, 50, 51, 54, 56, 57, 58, 63, 69, 70, 71, 79, 86, 88, 90, and 61 applicable to the Boroughs of Watsontown, Duncannon, Blakely, Weatherly, Schuylkill Haven, Perkasio, St. Clair, Catawissa, Ephrata, Lehighton, Hatfield, Mifflinburn, Quakertown, Kutztown, Olyphant, Lansdale, and to Sullivan County REA and Citizens' Electric Company of Lewisburg, respectively. The proposed changes would increase revenues from jurisdictional sales and service by \$3,498,829 or 9.7%, based on the 12-month period ending December 31, 1988.

The proposed increase is required by the increase in the cost of providing

service to said jurisdictional customers which PP&L has experienced since the base rates of these customers became effective on January 1, 1986. These base rates became applicable to Sullivan County REA on February 4, 1986.

Copies of the filing were served upon PP&L's jurisdictional customers named above and upon the Pennsylvania Public Utility Commission.

Comment date: August 22, 1988, in accordance with Standard Paragraph E at the end of this notice.

12. Arkansas Power and Light Company

[Docket No. ER88-546-000]

August 8, 1988.

Take notice that on August 1, 1988, Arkansas Power and Light Company (Company) tendered for filing revised Rate Schedule M33A for the period beginning September 1, 1988.

The Company states that Rate Schedule M33A requires the filing of annual revision to reflect the true-up to actual costs for the preceding year and also to reflect estimated charges for the period beginning September 1 of the current year.

Copies of this filing have been sent to the wholesale customer affected by the filing and the Arkansas Public Service Commission.

Comment date: August 22, 1988, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Company of New Mexico

[Docket No. ER88-543-000]

August 8, 1988.

Take notice that on July 29, 1988, Public Service Company of New Mexico (PNM) tendered for filing a Transmission Principles Letter of Agreement between PNM and El Paso Electric Company (EPE). The Letter Agreement amends Service Schedule G to the PNM-EPE Interconnection Agreement, and provides that until the earlier of the end of 1990 or the in-service date of a planned transmission line, PNM will make available to EPE up to 100 MW of firm transmission service and up to 72 MW of supplemental transmission service.

Copies of the filing have been served upon EPE and the New Mexico Public Service Commission.

Comment date: August 22, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825

North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18197 Filed 8-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-586-000 et al.]

Natural Gas Certificate Filings; ANR Pipeline Co. et al.

Take notice that the following filings have been made with the Commission.

1. ANR Pipeline company

[Docket No. CP88-586-000]

August 4, 1988.

Take notice that on July 15, 1988, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP88-586-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing ANR to provide firm natural gas sales service to the City of Havensville, Kansas (Havensville), a new customer, and incident thereto to construct and operate certain facilities necessary to provide such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states that the firm sales service to Havensville, of 200 dt of contract demand and 15,000 dt of annual contract quantity, would be rendered by ANR under its Rate Schedule SCS-1 and that the agreement would take effect upon the date of first delivery, the primary period ending October 31, 2003. ANR states further that, in order to accomplish the delivery of natural gas to Havensville, it would construct and operate the measurement facilities within the boundaries of the previously certificated Havensville Compressor Station facilities located in Pottawatomie, Kansas. Cost of these facilities is estimated at \$68,440, it is stated.

Comment date: August 25, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Northern Natural Gas Company, Division of Enron Corporation

[Docket No. CP88-627-000]

August 4, 1988.

Take notice that on July 25, 1988, Northern Natural Gas Company, Division of Enron Corporation (Northern) 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP88-627-000, a prior notice request pursuant to Sections 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Riata Energy (Riata), a producer of natural gas, under the certificate issued in Docket No. CP86-435-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport up to 700 MMBtu of natural gas per day, pursuant to a July 8, 1988, agreement between Northern and Riata. Northern would provide the service to Riata under the provisions of its Rate Schedule IT-1, it is indicated. Northern states that the average and annual quantities would be 525 MMBtu and 255,500 MMBtu, respectively.

Comment date: September 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. High Island Offshore System

[Docket No. CP75-104-054]

August 4, 1988.

Take notice that on July 21, 1988, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed a petition to amend in Docket No. CP75-104-054 pursuant to section 7(c) of the Natural Gas Act, to amend the certificate of public convenience and necessity issued in Docket No. CP75-104 so as to delete the biennial cost-of-service study condition set forth therein, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

On November 29, 1976, HIOS filed its schedule of proposed permanent transportation rates pursuant to Ordering Paragraph (A) of the Commission's Order on Rehearing issued on July 30, 1976, in Docket No. CP75-104. In that filing HIOS proposed, *inter alia*, an "interim" transportation rate to be effective during the build-up period. Following a series of informal conferences the Commission Staff concluded that an "interim" rate for

HIOS would comport with the public interest if subjected to several terms and conditions, one of which was that HIOS would submit a cost-of-service study every two years to justify the continuance of its then effective rates or to provide a basis for an increase or decrease in such rates as justified by the cost-of-service.

On December 6, 1977, the Commission issued an order approving the HIOS "interim" rate for which HIOS filed a petition to amend the original certificate on August 10, 1977, upon the condition that HIOS file a cost-of-service study every two years. The biennial rate provision, as thus imposed, has never been changed.

HIOS states that the Commission has never legally justified the imposition of the biennial rate review condition on HIOS and therefore it appears that, if not illegal, it is certainly discriminatory when compared to more recent decisions of the Commission which have either provided for a single two-year review or a review every three years.

Comment date: August 25, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Natural Gas Pipeline Company of America

[Docket Nos. CP88-291-003 and RP88-209-001]

August 4, 1988.

Take notice that on July 29, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, submitted Second Revised Sheet No. 24, Original Sheet No. 24A and First Revised Sheet No. 25 as part of its FERC Gas Tariff, First Revised Volume No. 1A. The proposed tariff sheets specify procedures to be followed in determining whether capacity is available to grant requests for firm transportation. This filing is not intended to affect any requests for firm capacity granted prior to the effective date thereof.

Natural states that this filing is being tendered pursuant to the terms of a Revised Addendum, filed on June 23, 1988, as an agreed supplement modifying the Stipulation and Agreement (Settlement) that was filed in Docket No. CP88-291 on May 19, 1988. Natural states further that this filing will be void and of no effect unless a Gas Supply Charge is implemented pursuant to that Settlement.

Natural requests the consolidation of the instant filing with its section 4 proceeding at Docket No. RP88-209 and permission to supplement its Statement

P in support hereof. Natural further requests any required waivers of the Commission's Regulations to allow the tendered tariff sheets to become effective on the first day of the month succeeding the first date on which both of the following have occurred: (i) A Gas Supply Charge has been implemented pursuant to the Settlement; and (ii) the Commission has issued a final order approving the rates in the consolidated proceeding.

Natural states that a copy of its filing has been mailed to its jurisdictional customers, interested state regulatory agencies and all parties on the official service list in Docket Nos. CP88-291 and RP88-209.

Comments date: August 11, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Questar Pipeline Company

[Docket No. CP88-650-000]

August 4, 1988.

Take notice that on August 1, 1988, as supplemented on August 3, 1988, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah, 84147, filed an application in Docket No. CP88-650-000 authorizing the transportation of natural gas pursuant to § 284.221 of the Commission's Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Questar states that it complies with the conditions set forth in paragraph (c) of § 284.221 of the Commission's Regulations.

Questar indicates that until October 1, 1988, it would use the rates established in Questar's competed rate proceeding in Docket No. RP86-7. Questar states that on that date, rates and charges and appropriate units of service proposed in Docket No. RP88-93-000 would be used pending the outcome of that proceeding. Questar also indicates it would perform its open-access transportation service pursuant to the terms and conditions established in Docket Nos. RP86-87-000 and RP86-87-001, proceedings Questar indicates that are still pending before the Commission.

Comment date: August 19, 1988, in accordance with Standard Paragraph F at the end of the notice.

6. Tennessee Gas Pipeline Company

[Docket No. CP88-596-000]

August 5, 1988.

Take notice that on July 20, 1988, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-

596-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to provide a transportation service for Texaco Marketing, Inc. (Texaco), a marketer, under Applicant's blanket certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set out in the request on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement dated June 22, 1988, and an amendment dated June 24, 1988, it proposes to transport natural gas for Texaco from various receipt points located in offshore Louisiana and in the States of Louisiana and Texas to various delivery points off Tennessee's system located in multiple states.

The Applicant further states that the peak day quantities would be 80,000 dekatherms, average daily quantities 2,000 dekatherms, and annual quantities would be 730,000 dekatherms. Service under § 284.223(a) commenced June 26, 1988, as reported in Docket No. ST88-4706 (filed July 14, 1988).

Comment date: September 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. High Island Offshore System

[Docket No. CP88-621-000]

August 5, 1988.

Take notice that on July 22, 1988, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP88-621-000 an application pursuant to section 7(c) of the Natural Gas Act requesting authorization to transport natural gas, on an interruptible basis, for TXG Gas Marketing Company (TXG Marketing), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

HIOS states that it has entered into two gas transportation agreements dated June 21, 1988, to provide, on an interruptible basis, transportation of up to a maximum daily quantity of 160,000 Mcf as long-haul gas and a maximum daily quantity of 10,000 Mcf as short haul gas for TXG Marketing for a primary term of two years for each transportation agreement and continuing year to year thereafter. HIOS states that the gas for the long-haul transportation would be received at various receipt points located along HIOS system in the High Island Area, offshore Texas. The gas for the short haul transportation will be received at two (2) receipt points along the HIOS system it is stated. HIOS proposes to transport the long-haul gas

to an existing interconnection of ANR Pipeline Company (ANR) or U-T Offshore System (U-TOS) in Block 167, West Cameron Area, offshore Louisiana or Stingray Pipeline Company in Block A-330, High Island Area, offshore Texas and to transport the short-haul gas to an existing interconnection of ANR or U-TOS in Block 167, West Cameron Area, offshore Louisiana.

HIOS proposes to charge TXG Marketing 9.69 cents per Mcf for the long-haul transportation and 4.90 cents per Mcf for the short-haul transportation under its Rate Schedule IT for Interruptible Transportation Service.

Comment date: August 25, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

8. Northwest Pipeline Corporation

[Docket No. CP88-578-016]

August 5, 1988.

Take notice that on August 1, 1988, Northwest Pipeline Corporation ("Northwest") submitted for filing, to be a part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Second Revised Sheet No. 38
Second Revised Sheet No. 39
Third Revised Sheet No. 40
Third Revised Sheet No. 41
Third Revised Sheet No. 42
Second Revised Sheet No. 211
Second Revised Sheet No. 212
Second Revised Sheet No. 213
Second Revised Sheet No. 213-A

Northwest states that these tariff sheets were filed for the purpose of modifying sections 1, 2 and 6 of Northwest's Rate Schedule LS-1 and the related Form of Service Agreement pursuant to Commission orders issued January 19 and May 31, 1988, as well as Northwest's compliance filing of June 10, 1988. Northwest states that such revisions will enable any party to contract for storage service in Northwest's liquefied natural gas (LNG) facility at Plymouth, Washington. The currently available capacity at the LNG facility will be made available to any party on a first-come, first-served basis. Northwest has requested an effective date of September 1, 1988.

A copy of this filing is being served on all affected customers and affected state commissions.

Comment date: August 19, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

9. Tarpon Transmission Company

[Docket No. CP88-634-000]

August 5, 1988.

Take notice that on July 27, 1988, Tarpon Transmission Company (Tarpon), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP88-634-000 a request pursuant to §§ 157.205 and 284.223 of the Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Texican Natural Gas Company (Texican), a marketer, under its blanket certificate issued in Docket No. CP88-89-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request with the Commission and open to public inspection.

Tarpon states that it proposes to transport natural gas from points of receipt located in Eugene Island Area, Blocks 380 and 381, offshore Louisiana to a point of delivery located in Block 274 of the Ship Shoal Area, South Addition, offshore Louisiana.

Tarpon further states that the maximum daily and annual quantities that it would transport for Texican would be 27,800 MMBtu equivalent and 1,460,000 MMBtu equivalent, respectively.

Tarpon indicates that in Docket No. ST88-4770-000, filed with the Commission on July 18, 1988, it reported that transportation service for Texican commenced July 15, 1988 under the 120-day automatic authorization provisions of § 284.233(a).

Comment date: September 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

10. Natural Gas Pipeline Company of America

[Docket No. CP88-644-000]

August 5, 1988.

Take notice that on July 29, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP88-644-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Enron Gas Marketing, Inc. (EGM), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP88-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to transport on an interruptible basis up to 200,000 MMBtu of gas on a peak day (and any additional volumes accepted pursuant to

the overrun provisions of Natural's Rate Schedule ITS) and 36,500,000 MMBtu on an annual basis for EGM. It is stated that Natural would receive the gas for EGM's account at various existing receipt points in Oklahoma, Texas, offshore Texas, Louisiana, offshore Louisiana, New Mexico, Kansas, Iowa, Arkansas and Nebraska and would deliver equivalent amounts of gas in Oklahoma, Iowa, Illinois, Arkansas, Kansas, Texas and Louisiana. It is asserted that the transportation service would be affected using existing facilities and would not require any construction of additional facilities. It is explained that the service commenced June 1, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations.

Comment date: September 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

11. Tennessee Gas Pipeline Company

[Docket No. CP88-610-000]

August 5, 1988.

Take notice that on July 21, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-610-000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for North Atlantic Utilities (North Atlantic), a marketer under the certificate issued in Docket No. CP87-115-000 pursuant to section 7 of the Natural Gas Act, all or more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated June 22, 1988, it proposes to transport natural gas for North Atlantic from various receipt points located offshore Louisiana and in the States of Louisiana, New York, and Texas to various delivery points off Tennessee's system points located in multiple states.

Tennessee further states that the peak day quantities would be 10,000 dekatherms, the average daily quantities would be 203 dekatherms and that the annual quantities would be 74,095 dekatherms. Service under § 284.223(a) commenced June 25, 1988 as reported in Docket No. ST88-4709.

Comment date: September 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

12. United Gas Pipe Line Company

[Docket No. CP88-633-000]

August 5, 1988.

Take notice that on July 27, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed a request pursuant to §§ 157.205 and 284.223 in Docket No. CP88-633-000, to provide interruptible transportation service on behalf of Texaco Gas Marketing, Inc., a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, as set out more fully in the request on file with the Commission and open to public inspection.

United states that the Interruptible Gas Transportation Agreement T1-21- (1673), dated June 15, 1988, proposes to transport a maximum daily quantity of 41,200 MMBtu, and that service commenced July 1, 1988, as reported in Docket No. ST88-4771, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: September 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

13. Gas Transport, Inc.

[Docket No. CP88-631-000]

August 5, 1988.

Take notice that on July 26, 1988, Gas Transport, Inc. (Gas Transport), 109 North Broad Street, Lancaster, Ohio 43130, filed in Docket No. CP88-631-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Borg-Warner Chemicals, Inc. (Borg-Warner) under Gas Transport's blanket certificate issued in Docket No. CP88-291-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Gas Transport states that it proposes to transport natural gas on behalf of Borg-Warner from a receipt point at Rainbow Station, Ohio, or other points of connection with Columbia Gas Transmission Corporation, to a delivery point at the Parkersburg, West Virginia, interconnection with Hope Gas, Inc., who would make final delivery to Borg-Warner. Gas Transport states that it would transport on an average day, 3,500 MMBtu and an annual volume of 2,190,000 MMBtu.

Comment date: September 19, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18182 Filed 8-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-32-000]

Colorado Interstate Gas Co.; Filing of Annual Purchased Gas Adjustment Pursuant to Order Nos. 483 and 483-A

August 9, 1988.

Take notice that Colorado Interstate Gas Company (CIG) on August 1, 1988, tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1, to implement its first annual purchased gas adjustment under the provisions of Order Nos. 483 and 483-A. The proposed tariff sheets are to be effective October 1, 1988.

CIG states that the revised tariff sheets reflect a demand rate decrease of \$1.48, and a commodity rate decrease of 2.07¢ for the G-1, P-1, PR-1, H-1, PS-1 and F-1 Rate Schedules, and a decrease of 14.22¢ for the one-part rates under Rate Schedule SG-1. The commodity rate change reflects a decrease of 4.41¢ in CIG's projected cost of gas and an increase of 2.34¢ in CIG's surcharge rate effective October 1, 1988. These decreases are based upon a comparison with the rates filed by CIG on April 28, 1988 in Docket No. RP88-126, which rates were accepted by Commission order of May 25, 1988.

Copies of the filing have been served upon CIG's jurisdictional customers and other interested persons, including public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with section 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). All such motions or protests should be filed on or before August 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18184 Filed 8-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA82-1-21-028]

**Columbia Gas Transmission Corp.;
Proposed Changes in FERC Gas Tariff**

August 9, 1988.

Take notice that Columbia Gas Transmission Corporation (Columbia) on July 29, 1988, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective September 1, 1988:

One hundred and twenty-eighth Revised Sheet No. 16

Columbia states that the revised tariff sheet is submitted to eliminate the 12-month negative Benchmark Surcharge of 26.61¢ per Dth as authorized by Article II of the April 4, 1985 Stipulation and Agreement (Stipulation) in Docket No. TA82-1-21-001, *et al.*

Columbia states that in accordance with the Stipulation, it filed for a 12-month negative commodity surcharge to become effective Sept. 1, 1987, to return to its customers 50% of a decrease in gas costs attributable to the twelve-month period ended March 31, 1987, plus interest, in accordance with the procedures set forth in Appendix B to the Stipulation. Since the referenced twelve-month surcharge period expires on August 31, 1988, Columbia is making the instant filing to remove the negative surcharge from its rates.

Columbia states that pursuant to Appendix B of the Stipulation, within 90 days after Sept. 1, 1988, Columbia will file with the Commission and provide the parties a report showing under-amortization or over-amortization of the decrease in gas costs attributable to the subject Benchmark period. Columbia shall credit or debit the balance to Account No. 191.

Copies of the filing were served upon the Columbia's jurisdictional customers and interested state commissions and to each person designated on the official service list compiled by the Commission's Secretary in Docket No. TA82-1-21-0001, *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to

intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18185 Filed 8-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-226-000]

**Eastern Shore Natural Gas Co.;
Proposed Changes in FERC Gas Tariff**

August 8, 1988.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on July 29, 1988, the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective on August 1, 1988:

Original Sheet No. 6B

Fourth Revised Sheet No. 210

Original Sheet No. 262

Original Sheet No. 263

ESNG states that such proposed changes are being filed pursuant to Order No. 500 to recover take-or-pay fixed charges which its pipeline suppliers bill to ESNG. As a downstream pipeline, ESNG proposes to recover such costs on an as-billed basis, pursuant to § 2.104(e) of the Commission's General Policy and Interpretations.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR § 385.211 and 385.214). All such motions or protests should be filed on or before August 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18186 Filed 8-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-193-001]

**Midwestern Gas Transmission Co.;
Filing**

August 8, 1988.

Take notice that on August 1, 1988, Midwestern Gas Transmission Company (Midwestern) filed the following tariff sheets to amend Volume 1 of its FERC Gas Tariff, to be effective July 1, 1988:

First Revised Sheet No. 192

First Revised Sheet No. 193

Midwestern states that this filing complies with the July 15, 1988, Commission Order in Docket No. RP88-193. Midwestern has filed Revised Sheet No. 192 to eliminate reference to a special notice period before the effective date of the initial demand surcharge, and Revised Sheet No. 193 to provide for direct billing of former customers only if they were receiving, or had certificate authorization to receive, service on July 1, 1988.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18187 Filed 8-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ88-1-25-000]

**Mississippi River Transmission Corp.;
Rate Change Filing**

August 8, 1988.

Take notice that on August 1, 1988 Mississippi River Transmission Corporation (MRT) tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Tariff sheet	Proposed effective date
Twenty-Fourth Revised Sheet No. 4.	Sept. 1, 1988.
Substitute Ninth Revised Sheet No. 4A.	June 1, 1988.
Substitute Fifth Revised Sheet No. 43.	Do.
Substitute Fourth Revised Sheet No. 44.	Do.
Substitute Fourth Revised Sheet No. 46.	Do.
Substitute Fourth Revised Sheet No. 51.	Do.
Substitute Fifth Revised Sheet No. 54.	Do.
Original Sheet No. 54A.	Do.
Substitute Third Revised Sheet No. 58.	Do.

MRT states the filing is being submitted pursuant to the Purchased Gas Cost Adjustment (PGA) Clause of its tariff to track pipeline and producer cost changes, and to recover gas costs which have accumulated in its Unrecovered Purchase Gas Cost Account. MRT states the filing reflects a decrease under Rate Schedule CD-1 of 61.5 cents per Mcf in Demand Charge D-1, a decrease of 15.79 cents per Mcf in the Demand Charge D-2, and a commodity rate increase of 45.98 cents per Mcf. The single part rate under Rate Schedule SGS-1 reflects an overall increase of 24.24 cents per Mcf. The overall cost impact of such rate changes, when applied to quarterly jurisdictional billing determinants, is an increase of \$6.0 million.

MRT states that the current adjustments contained in Twenty-Fourth Revised Sheet No. 4 have been calculated on the basis of the "Secondary Rates" which may become effective on October 1, 1988, by United Gas Pipe Line Company (United) one of MRT's pipeline suppliers. By Order issued April 29, 1988, at Docket No. RP88-92-000, United's "Primary Rates" were suspended until October 1, 1988, subject to the condition that United place into effect its Secondary Rates in the event that certain of United's pipeline customers have not abandoned their purchases from United as of that date. Inasmuch as those pipeline customers have not yet abandoned their purchases from United, MRT has based the instant filing upon the assumption that United will place its Secondary Rates (resubmitted on June 13, 1988, at Docket No. RP88-92-000) into effect on October 1, 1988.

MRT states Substitute Ninth Revised Sheet No. 4A reflects the correction of a typographical error related to the monthly direct bill take-or-pay amount for Laclede Gas Company, which was

originally filed on July 5, 1988 in Docket No. TA88-3-25.

MRT states by letter order dated July 1, 1988 in Docket No. RP88-146, the Commission directed MRT to refile certain tariff sheets in order to bring such sheets into compliance with Commission Order Nos. 483 and 483-A. The remaining tariff sheets listed above are being filed in compliance with the Commission's order and reflect the necessary revisions.

MRT states that copies of its filing have been served on all jurisdictional customers and interested state commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18188 Filed 8-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ88-2-26-000]

Natural Gas Pipeline Co. of America; Changes In Rates

August 8, 1988.

Take notice that on August 1, 1988, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 (Tariff) the below listed tariff sheets to be effective September 1, 1988.

Substitute Seventy-fifth Revised Sheet No. 5

Substitute Fortieth Revised Sheet No. 5A

Natural states the purpose of the instant filing is to implement Natural's quarterly PGA unit rate adjustment calculated pursuant to section 18 of the General Terms and Conditions of Natural's Tariff.

Natural states the overall effect of the quarterly adjustment when compared to Natural's last quarterly PGA filing in Docket TQ88-1-26-000 effective June 1, 1988, is an increase in the DMQ-1

commodity charge of 10.68¢, a decrease in the DMQ-1 demand charge of \$.02 and an increase in the DMQ-1 entitlement charge of \$.0026.

Appropriate adjustments have been made with respect to Natural's other rate schedules. This change in rates will produce an increase in revenues of approximately \$10.6 million based upon sales volumes projected for the quarterly period September 1, 1988 through November 30, 1988.

A copy of the filing is being mailed to Natural's jurisdictional sales customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211. All such motions or protests must be filed on or before August 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18189 Filed 8-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP88-19-000]

Natural Gas Pipeline Co.; Producer Filing To Collect Compression Allowance Pursuant to Order No. 473¹

Issued August 8, 1988.

Take notice that on May 3, 1988, Exxon Corporation (Exxon) filed, pursuant to Rule 211 of the Commission's Rules of Practice and Procedure² and § 271.1104(h)(4)(ii) of the Commission's regulations,³ a protest concerning its contractual authority to collect compression allowances pursuant to certain area rate clauses in its gas sales agreements with Natural Gas Pipeline Company of America (NGPL).

Exxon states that pursuant to contracts that were filed as FERC Rate

¹ Compression Allowances and Protest Procedures Under NGPA section 110, 52 FR 21,660 (June 9, 1987), FERC Statutes and Regulations, Regulations Preambles § 30.747; Order on rehearing, Order No. 473-A, 53 FR 2,826 (Feb. 2, 1988), FERC Statutes and Regulations, Regulations Preambles § 30.788.

² 18 CFR 385.211 (1987).

³ 18 CFR 271.1104(h)(4)(ii) (1987).

Schedules 352 and 380 (which have since been replaced) Exxon is entitled to receive compression allowances. Exxon states that it has provided both intrinsic and extrinsic evidence which demonstrates that Exxon and NGPL specifically intended, through the provisions of an area rate clause, for Exxon to receive the highest price allowed by any governmental authority for the quality of gas involved and that such language encompassed, *inter alia*, compression allowances. Exxon states that NGPL knew of the broad intent included in the subject contracts. Exxon further states that the contract language and the extrinsic evidence that it has provided in its protest is sufficient to overcome the presumption against contractual authority to collect compression allowances and that the matter therefore requires an evidentiary hearing.

Pursuant to § 271.1104(h)(4), any person may file a protest to Exxon's claim of contractual authority. Such protests must be filed, within 90 days of publication of this notice in the *Federal Register*, with the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-18183 Filed 8-10-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-227-000]

Paiute Pipeline Co.; Change in Rates and Proposed Tariff Filings

August 8, 1988.

Take notice that on August 1, 1988, Paiute Pipeline Company (Paiute), pursuant to section 4 of the Natural Gas Act and Part 154 of the Commission's Regulations thereunder, tendered for filing a notice of change in rates (and certain identified tariff provisions) for natural gas service rendered to jurisdictional customers served under Original Volume No. 1 of Paiute's FERC Gas Tariff. Paiute also tendered proposed rates and tariff sheets to be applicable to the transportation of natural gas in interstate commerce under Order Nos. 436/500 and the regulations adopted therein.

Paiute states that in order to implement the notice of change in rates and the terms and conditions governing transportation services, Paiute tendered for filing and acceptance certain tariff sheets.

Paiute proposes to make the tendered

tariff sheets and the change in rates effective on September 1, 1988.

Paiute states that it is a wholly-owned subsidiary of Southwest Gas Corporation (Southwest). Paiute further states that by order issued May 17, 1988 in Docket No. CP87-309-000, the Commission authorized Paiute to: (1) Acquire and operate the certificated interstate natural gas facilities previously owned and operated by Southwest, (2) render interstate sales services in accordance with outstanding certificates of public convenience and necessity previously issued to Southwest, and (3) and make sales of natural gas in interstate commerce to Southwest-Northern Nevada and Southwest-Northern California for resale.

Paiute states that its acquisition of Southwest's jurisdictional facilities has now been consummated, and Paiute is commencing operations on August 1, 1988. Paiute further states that consistent with the undertaking set forth in the Offer of Settlement filed by Paiute and Southwest in Docket No. CP87-309-000 on February 10, 1988 (Settlement Offer), it is submitting a general rate change filing in the instant proceeding pursuant to Section 4 of the Natural Gas Act, and is resubmitting the transportation rate schedules, general terms and conditions, and forms of service agreement that were part of its proposed tariff in the Settlement Offer, as modified to comply with the Commission's May 17, 1988 order in Docket No. CP87-309-000, and with certain other modifications as described in the filing.

Paiute states that based upon the test period cost of service and projected sales and transportation quantities employed in its filing, Paiute projects a deficiency of approximately \$5,364,249 in annual revenues from jurisdictional sales and transportation services at current rates. Paiute is therefore proposing to increase rates for natural gas sales services rendered to jurisdictional customers and to establish rates for jurisdictional transportation services in an amount that is sufficient to eliminate the revenue deficiency and recover the full cost of service reflected in its filing.

Paiute asserts that in Docket No. CP87-309-000, it had requested that the Commission issue it a blanket certificate under § 284.221 of the Commission's Regulations to transport natural gas in interstate commerce on an open access basis in accordance with the principles adopted in Order Nos. 436/500. Paiute states that in view of its submission in this proceeding of proposed

transportation rates and revised transportation tariff sheets in compliance with the Commission's May 17, 1988 order, Paiute renews its request that the Commission issue it a blanket certificate under § 284.221 of the Commission's Regulations.

Further, Paiute states that it is providing an "open season" period from August 1, 1988 through August 31, 1988 for receiving requests for transportation service. According to Paiute, all completed requests for transportation service that are received by Paiute during the "open season" period will be treated as having been received at the same time for purposes of determining priority of service status. Paiute indicates that in order to be deemed as complete, a request for transportation service must conform to the requirements set forth in its proposed transportation tariff sheets filed in this proceeding, but Paiute further indicates that it will provide an opportunity, shortly before commencing transportation services, for persons who submit requests for transportation service during the "open season" period to modify their request so as to conform their requests to actual supply arrangements then available to them.

Paiute requests waiver of § 154.63(e)(ii) of the Commission's Regulations, as necessary, to permit the inclusion in the rate base of facilities not yet placed in service. Paiute also requests that waiver be granted of all applicable rules and regulations as may be necessary so as to implement the tendered tariff sheets and proposed rates effective September 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before Aug. 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-18190 Filed 8-10-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ88-2-28-000]

**Panhandle Eastern Pipe Line Co.;
Proposed Changes In FERC Gas Tariff**

August 8, 1988.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on August 1, 1988, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1: Sixty-Fifth Revised Sheet No. 3-A Forty-Second Revised Sheet No. 3-B

The proposed effective date of these revised tariff sheets is September 1, 1988.

Panhandle states that these revised tariff sheets reflect a commodity rate decrease of (13.99¢) per Dt, which includes:

(1) A (14.28¢) per Dt decrease in the projected purchased gas cost component; and

(2) A 0.29¢ per Dt increase pursuant to section 22 of the General Terms and Conditions of Panhandle's tariff (ANGTS tracking mechanism).

Panhandle further states that these revised tariff sheets filed herewith also reflect the following changes to Panhandle's D₁ and D₂ demand rates:

(1) A decrease of (\$0.14) for D₁ pursuant to section 22 of the General Terms and Conditions of Panhandle's tariff (ANGTS tracking mechanism); and

(2) A decrease of (\$0.01) for D₁ and no change for D₂ to reflect a decrease in the § 18.4 of the General Terms and Conditions of Panhandle's tariff (pipeline supplier demand costs).

Panhandle states that the above-referenced tariff sheets are being filed in accordance with § 154.308 (quarterly PGA filing) of the Commission's Regulations and pursuant to section 18 (Purchased Gas Adjustment Clause) and section 22 (ANGTS Transportation Clause) of Panhandle's FERC Gas Tariff, Original Volume No. 1 to reflect the changes in Panhandle's jurisdictional rates effective September 1, 1988.

Panhandle states that copies of its filing has been served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 16, 1988. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-18191 Filed 8-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-38-000]

**Ringwood Gathering Co.; Proposed
Changes In FERC Gas Tariff**

August 9, 1988.

Take notice that on August 2, 1988, Ringwood Gathering Company (Ringwood), 4828 Loop Central Drive, Loop Central Three, Suite 850, Houston, Texas 77081, filed Forty-fourth Revised Sheet No. PGA-1 to its FERC Gas Tariff and FERC Form No. 542-PGA pursuant to section 4 of the Natural Gas Act and 18 CFR 154.305. The proposed changes would increase revenues from jurisdictional sales and service by \$90.110 for the three month period October 1, 1988-December 31, 1988.

Copies of the filing were served upon Ringwood's jurisdictional customers and interested state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. All motions to intervene or protests are due on or before August 29, 1988.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-18192 Filed 8-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-17-013]

**Southern Natural Gas Co.; Proposed
Changes In FERC Gas Tariff**

August 8, 1988.

Take notice that on August 3, 1988, Southern Natural Gas Company (Southern) tendered for filing the following tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective June 1, 1988:

Fourth Revised Sheet No. 30Y
Fourth Revised Sheet No. 30QQ
Second Revised Sheet No. 45R.20
Second Revised Sheet No. 53L.40
Second Revised Sheet No. 53L.56

and Substitute Third Revised Sheet No. 45R.24 to be effective December 1, 1987.

Southern states that on July 19, 1988, the Commission issued its Order Accepting Compliance Filing Subject to Conditions (Order) in which the Commission addressed a compliance filing tendered by Southern in this docket on June 6, 1988, and directed Southern to file revised tariff sheets in accordance with the discussion therein within 15 days of such Order. Accordingly, Southern has submitted certain of the revised tariff sheets listed above and has requested a waiver of the Commission's Regulations to make the revised sheets effective December 1, 1987, and June 1, 1988, as indicated above.

Southern states that copies of the filing were mailed to all of Southern's jurisdictional purchasers, shippers, and interested state commissions, as well as the parties listed on the Commission's official service list complied in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before August 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-18193 Filed 8-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-228-000]

Tennessee Gas Pipeline Co.; Filing of Changes in Rates

August 8, 1988.

Take notice that on August 1, 1988, Tennessee Gas Pipeline Company (Tennessee) tendered for filing certain changes in its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, to be effective September 1, 1988.

Tennessee states that the changes will increase revenues from jurisdictional sales and services by \$190,076,955. Tennessee states, however, that the revised rates shown in its filing reflect a return on equity that is considerably less than the return that Tennessee demonstrates is necessary to adequately compensate it for the risks of operating in today's competitive markets and regulatory environment.

Tennessee states that this rate increase is necessitated by, among other things, an increase in gas plant and related expenses, an increase in costs to operate and maintain its pipeline and a decline in system sales volumes. Tennessee also states that its filing institutes seasonal sales and interruptible transportation rates, separate rates for transportation in its principal gas supply area, and rates for long haul transportation outside of the gas supply area based on mileage of haul to each of Tennessee's six sales zones.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18194 Filed 8-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TO88-1-56-000]

Valero Interstate Transmission Co.; Proposed Changes In FERC Gas Tariff

August 8, 1988.

Take notice that Valero Interstate Transmission Company ("Vitco"), on August 1, 1988 tendered for filing the following tariff sheets as required by Orders 483 and 483-A containing changes in Purchased Gas Cost rates pursuant to such provisions:

FERC Gas Tariff, Original Volume No. 1

8th Revised Sheet No. 14.2

FERC Gas Tariff, Original Volume No. 2

13th Revised Sheet No. 6

Vitco states that this filing reflects changes in its purchased gas cost rates pursuant to the requirements of Orders 483 and 483-A.

Vitco states the change in rates to Rate Schedule S-1, FERC Gas Tariff, Original Volume No. 2 includes an increase in purchased gas costs of \$.1965 per MMBtu. The change in rates to Rate Schedule S-3 includes an increase in purchased gas cost of \$.2212 per MMBtu.

The proposed effective date for the above filing is September 1, 1988. Vitco requests a waiver of any Commission order or regulations which would prohibit implementation by September 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18195 Filed 8-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP86-32-012]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

August 8, 1988.

Take notice that Williams Natural Gas Company (WNG) on August 3, 1988, tendered for filing tariff sheets pursuant to Article II, section 8 of the Revised Stipulation and Agreement in Docket Nos. RP86-32, *et al.*, as finally approved and clarified by order issued July 5, 1988. These tariff sheets which are listed in Attachment A reflect all changes to Volume No. 1 which have been filed and approved by the Commission since January 4, 1988 when proposed tariff sheets were submitted with the Revised Stipulation and Agreement. In compliance with the Commission's letter order of July 19, 1988 in Docket Nos. RP86-032-010 and 011, WNG has amended Sheet No. 6 to eliminate the rate differential charge to Kansas Cities. WNG also made changes in pagination in this filing. Additionally, the Index of Purchasers contained in Original Volume No. 1 has been added. Certain modifications to Article 21 of WNG's General Terms and Conditions which were filed on July 27, 1988 as ordered by the Commission in a letter order dated July 1, 1988 in Docket No. RP88-139-000 are reflected in these refiled tariff sheets. No other changes have been made from the tariff sheets filed on June 29, 1988.

WNG states that the effective date for these tariff sheets is July 20, 1988 with the exception of Revised Sixth Revised Sheet No. 6. When WNG filed tariff sheets on June 29, WNG proposed that the effective date be the later of July 1, 1988 or the date on which WNG accepted the open-access blanket certificate in Docket No. CP86-631-001. On July 20, 1988, WNG accepted the open-access blanket certificate.

WNG is also filing Revised Sixth Revised Sheet No. 6 to be effective August 1, 1988. Sixth Revised Sheet No. 6 was filed in Docket No. TQ88-2-88 and is being revised pursuant to the Commission's letter order of July 19, 1988 to eliminate the rate differential charge to Kansas Cities.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825

North Capitol Street NE., Washington DC 20426, in accordance with § 385.211, 385.214 of the commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-18196 Filed 8-10-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

(PF-501; FRI-3428-6)

E.I. du Pont de Nemours & Co., Inc.; Amended Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of an amended petition by E.I. Du Pont de Nemours & Co., Inc., for food additive petition (FAP) 5H5449 for the fungicide bis(4-fluorophenyl)methyl (1H-1,2,4-triazol-1-ylmethyl) silane in or on the raw agricultural commodity apple pomace.

DATE: Comments by September 12, 1988.

ADDRESS:

By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m.,

Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

Lois Rossi, Product Manager (PM) 21, Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 200, CM # 2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-2690.

SUPPLEMENTARY INFORMATION: EPA issued notice of FAP 5H5449 in the *Federal Register* of December 12, 1984 (49 FR 48374), which announced that E.I. Du Pont de Nemours & Co., Inc., Walker's Mill, Barley Mill Plaza, Wilmington, DE 19898, proposed amending 21 CFR Part 561 by establishing a regulation permitting residues of the fungicide bis(4-fluorophenyl)methyl (1H-1,2,4-triazol-1-ylmethyl) silane in or on apple pomace at 1.5 ppm.

In the *Federal Register* of March 19, 1986 (51 FR 9514), EPA issued a notice of an amendment to the petition that revised the chemical name to read "1=[Bis(4-fluorophenyl) methylsilyl] methyl]-1H-1,2,4-triazole."

EPA is issuing notice of further amendment to FAP 5H5449, which is proposing to establish a tolerance of 3.0 parts per million of the fungicide bis(4-fluorophenyl)methyl (1H-1,2,4-triazol-1-ylmethyl) silane in or on apple pomace.

Authority: 21 U.S.C. 346a.

Dated: August 4, 1988.

Edwin F. Tinsworth,

Registration Division, Office of Pesticide Programs.

[FR Doc. 88-18291 Filed 8-10-88; 8:45 am]

BILLING CODE 6560-50-M

FARM CREDIT ADMINISTRATION

Order Amending Order Appointing Receiver of the Federal Land Bank of Jackson, MS and Federal Land Bank Association of Jackson, MS

ACTION: Notice.

SUMMARY: On August 4, 1988, the Order Appointing Receiver of the Federal Land Bank of Jackson, Mississippi, and the Federal Land Bank Association of Jackson, Mississippi, dated May 20, 1988 (53 FR 18812, May 24, 1988), was amended to substitute Larry G. Koch for Ronald E. Watkins as signatory agent for REW Enterprises, Inc., Receiver of the Federal Land Bank of Jackson, Mississippi, and the Federal Land Bank Association of Jackson, Mississippi. The amended Order authorizes Larry G. Koch to sign any and all documents on

behalf of the Receiver and to delegate signatory authority to any employee of the Institutions-in-receivership.

Dated: August 8, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-18204 Filed 8-10-88; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the *Federal Register* in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 213-010601-006.

Title: Sailing Agreement by and among Neptune Orient Lines, Ltd., Orient Overseas Container Line, Inc., Yamashita-Shinnihon Steamship Co., Ltd. and Nippon Liner System, Ltd.

Parties:

Neptune Orient Lines, Ltd.
Orient Overseas Container Line, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed modification would add Nippon Liner System, Ltd. as a member of the agreement's Pacific service in place of Yamashita-Shinnihon Steamship Co., Ltd. The parties have requested a shortened review period.

Agreement No.: 203-010894-002.

Title: Australia-United States Discussion Agreement.

Parties:

Columbus Line
ABC Containerline N.V.
Associated Container Transportation (Australia) Ltd. (Pace Line)
Shipping Corporation of New Zealand
Pacific Australia Direct Line

Synopsis: The proposed modification would delete Pacific Australia Direct Line as a party to the agreement and would reflect a change in the name of the Shipping Corporation of New

Zealand Limited to Australia-New Zealand Direct Line.

Agreement No.: 202-011207.

Title: Turkey/United States Atlantic and Gulf Rate Agreement.

Parties:

Farrell Lines, Inc.

Lykes Bros. Steamship Co., Inc.

Pharos Lines, S.A.

Synopsis: The proposed agreement would permit the parties to agree upon and publish joint rates, terms and conditions for the movement of cargo from ports and points in Turkey to U.S. Atlantic and Gulf Coast ports and inland and coastal points.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: August 8, 1988.

[FR Doc. 88-18202 Filed 8-10-88; 8:45 am]

BILLING CODE 6730-01-M

Department of Health and Human Services

Public Health Service

National Commission on Orphan Diseases; Public Meeting

AGENCY: Office of the Assistant Secretary for Health.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health are announcing a meeting of the National Commission on Orphan Diseases scheduled on August 18, 19, and 20, 1988.

DATE: Date, time and place: Open Public Meeting, August 18, 1988, 9:00 a.m.-4:00 p.m.; August 19 and 20, 1988, 8:30 a.m.-5:00 p.m.; Open Public Session, August 18, 1988, 4:00 p.m.-5:00 p.m.; August 18 and 19, Wilson Hall, 3rd floor, Bldg. 1, Center Drive, NIH Campus, Bethesda, MD 20892; August 20, Old Georgetown Room, Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate in the Open Public Session should be sent to: Mary C. Custer, Ph.D., Executive Secretary, National Commission on Orphan Diseases, Office of the Assistant Secretary for Health, 5600 Fishers Lane, Park Building, Room 1-20, Rockville, MD 20857, 301-443-6156.

Agenda: Open Public Session

Interested persons may present data, information or views, orally or in writing, on issues pending before the Commission or on any of the duties and responsibilities of the Commission on August 18 from 4 p.m. to 5 p.m. Those desiring to make oral presentations should notify the contact person before August 16, 1988 and submit a brief statement of the information they wish to present to the Commission. The request should include the names and addresses of proposed participants and an indication of the approximate time required to make their comments. Any person attending the open public session who does not request prior approval to speak may make an oral presentation at the conclusion of the session, if time permits, at the chairperson's discretion.

Agenda: Open Commission Meeting

The Commission will review the reports on product and professional liability issues and the peer review process. The Commission will also review results of the surveys of rare disease research activities of Federal agencies, foundations, voluntary organizations and pharmaceutical manufacturers and the results of the telephone surveys of physicians, biomedical researchers, and patients with rare diseases. In addition, the Commission will formulate recommendations to be included in its final report to Congress.

SUPPLEMENTARY INFORMATION: The Commission meeting will be conducted in accordance with the agenda published in this *Federal Register* notice. Any changes in the agenda will be announced at the beginning of the meeting.

Persons interested in specific agenda items to be discussed in the open meeting may ascertain from the contact person the approximate time of discussion.

A list of Commission members and the charter of the Commission will be available at the meeting. Interested persons who are unable to attend the meeting may request this information from the contact person. In addition, summary minutes of the meeting will be available upon request from the contact person.

This notice is issued under 10(a)(1) and (2) of the Federal Advisory Committee Act, Pub. L. 92-463 (5 U.S.C. Appendix I).

Dated: August 5, 1988.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 88-18150 Filed 8-10-88; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-88-1842]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement, and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

AUTHORITY: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: August 5, 1988.

David S. Cristy,

Deputy Director, Information Policy and Management Division.

Proposal: Community Development Block Grants: Relocation,

Displacement, and Acquisition (FR-2474)

Office: Community Planning and Development

Description of the Need for the Information and its Proposed Use:

This rule implements section 509 of the Housing and Community Development Act of 1987 which adds new requirements to sections 104(d) and 104(k) of the Housing and Community Act of 1974. The

information collection establishes consistent relocation, displacement, and acquisition policies and requirements applicable to the Community Development Block Grant Programs and the Urban Development Action Grant Programs.

Form Number: None.

Respondents: State or Local Governments

Frequency of submission: On Occasion
Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Grantees application.....	50	.....	1	.....	40	.....	2,000
Recordkeeping.....	1,200	.....	1	.....	7.66	.....	9,200

Total Estimated Burden Hours: 11,200
Status: New

Contact: Harold J. Huecker, HUD, (202) 755-6336; John Allison, OMB, (202) 395-6880

Date: August 5, 1988.

[FR Doc. 88-18120 Filed 8-10-88; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. D-88-884]

Office of the Regional Administrator—Regional Housing Commissioner; Acting Manager, Region IV (Atlanta) Designation for Columbia Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Columbia Office.

EFFECTIVE DATE: June 28, 1988.

FOR FURTHER INFORMATION CONTACT:

Henry E. Rollins, Director, Management Systems Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 634, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303-3388, 404-331-5199.

Designation of Acting Manager for Columbia Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, That no official is authorized to serve as Acting Manager unless all other employees whose titles precede his/hers

in this designation are unable to serve by reason of absence:

1. Deputy Manager
2. Director, Housing Management Division
3. Director, Community Planning and Development Division
4. Chief Counsel
5. Director, Housing Development Division
6. Director, Fair Housing and Equal Opportunity Division

This designation supersedes the designation effective May 13, 1988, (53 FR 22389, June 15, 1988).

(Delegation of Authority by the Secretary effective October 1, 1970 (36 FR 3389, February 23, 1971).

This designation shall be effective as of June 28, 1988.

Ted B. Freeman,

Manager, Columbia Office.

Raymond A. Harris,

Regional Administrator, Regional Housing Commissioner, Office of the Regional Administrator.

[FR Doc. 88-18121 Filed 8-10-88; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[CO-010-08-7150-09 ZCKH]

Supplemental Draft Environmental Impact Statement for the Rock Creek/Muddy Creek Reservoir, CO

AGENCY: Bureau of Land Management, Interior and Forest Service, USDA.

ACTION: Notice of availability of the Supplemental Draft Environmental

Impact Statement (SDEIS) for the Rock Creek/Muddy Creek Reservoir and Plan amendments to the Kremmling Resource Management Plan (RMP), Routt National Forest Land and Resource Management Plan (Forest Plan).

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management and the Forest Service have prepared a Supplemental Draft Environmental Impact Statement for the proposed Rock Creek and Muddy Creek reservoir.

DATE: Written comments on the Supplemental DEIS will be accepted up to and including November 25, 1988.

ADDRESS: Written comments on the proposals in the document should be addressed to: David Atkins, Area Manager, Bureau of Land Management, Kremmling Resource Area, P.O. Box 68, Kremmling, Colorado 80459 or Jerry E. Schmidt, Forest Supervisor, Routt National Forest, 29587 West U.S. 40, Suite 20, Steamboat Springs, Colorado 80487.

FOR FURTHER INFORMATION CONTACT:

David Harr, Bureau of Land Management, Kremmling Resource Area, P.O. Box 68, Kremmling, Colorado 80459; Telephone (303) 724-3437 or Ray George, Forest Service, Yampa Ranger District, P.O. Box 7, Yampa, Colorado 80483; Telephone (303) 638-4516.

SUPPLEMENTARY INFORMATION: This Supplemental DEIS describes and analyzes the environmental impacts for a proposal from the Colorado River Water Conservation District (CRWCD) to construct and operate a reservoir on Rock Creek, located on the Yampa Ranger District of the Routt National Forest, Routt County, Colorado with an alternative site on Muddy Creek, located on public lands administered by the

Kremmling Resource Area of the Craig District, Bureau of Land Management, Grand County, Colorado. The SDEIS also documents the need to amend the Kremmling Resource Management Plan or the Routt National Forest Land and Resource Management Plan. The SDEIS also serves as the environmental documentation required by the Bureau of Reclamation to execute an agreement which would provide for water exchanges between the proposed new reservoir and Green Mountain Reservoir.

The alternatives considered in the SDEIS include:

No Action
Rock Creek
Muddy Creek

Availability: Single copies of the Supplemental DEIS are available from the Kremmling Resource Area Office, P.O. Box 68, Kremmling, Colorado 80459; and the Yampa Ranger District Office, P.O. Box 7, Yampa, Colorado 80483.

Public hearings to receive oral and/or written comments on the proposed project will be held at 7:00 p.m. at the following locations:

October 3, 1988
Denver, CO—Denver Botanical Garden
October 4, 1988
Kremmling, CO—Grand County
Fairgrounds Extension Building
October 5, 1988
Oak Creek, CO—Oak Creek High
School
October 6, 1988
Grand Junction, CO—BLM District
Office

The Corps of Engineers, Sacramento District will participate in these public hearings with respect to their authority under section 404 of the Clean Water Act.

Date: August 2, 1988.

Gary E. Cargill,
Regional Forester.
Neil F. Morck,
State Director.

[FR Doc. 88-18134 Filed 8-10-88; 8:45 am]

BILLING CODE 4310-JB/3410-11-M

Bureau of Land Management

[AK-964-4213-15; F-14852-A]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(f), will be issued to Dot Lake Native Corporation

for approximately 1,090 acres. The lands involved are in the vicinity of Dot Lake, Alaska.

Copper River Meridian, Alaska

T. 22 N., R. 7 E.,

Those portions of Tract A more particularly described as (protracted):

Sec. 28, SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 31, S $\frac{1}{2}$;
Sec. 32, NE $\frac{1}{4}$, S $\frac{1}{2}$;
Sec. 33, W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, excluding U.S. Survey No. 4290.

Containing approximately 1,090 acres.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Tundra Times. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until September 12, 1988, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Stanley H. Bronczyk,

Chief, Branch of Doyon Adjudication.

[FR Doc. 88-18132 Filed 8-10-88; 8:45 am]

BILLING CODE 4310-5A-M

[AK-4213-15; F-14852-A; F-14852-B]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(f), will be issued to Dot Lake Native Corporation for approximately 30 acres. The lands involved are in the vicinity of Dot Lake, Alaska.

Lot 6, U.S. Survey No. 4285, Alaska, that portion within Alaska Native Claims Settlement Act Sec. 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143), twenty-five (25) feet each side of the centerline.

Containing approximately 0.7 acres.

U.S. Survey No. 4300, Alaska, that portion within Alaska Native Claims Settlement Act Sec. 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143), twenty-five (25) feet of the centerline.

Containing approximately 2 acres.

Copper River Meridian, Alaska

T. 21 N., R. 7 E.

Those portions of Tract A more particularly described as (protracted):

Secs. 2 and 3, that portion within Alaska Native Claims Settlement Act Sec. 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143), twenty-five (25) feet each side of the centerline, excluding U.S. Survey No. 4287;

Sec. 11, that portion within Alaska Native Claims Settlement Act Sec. 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143), twenty-five (25) feet each side of the centerline, excluding U.S. Survey No. 4300;

Secs. 12 and 13, that portion within Alaska Native Claims Settlement Act Sec. 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143), twenty-five (25) feet each side of the centerline.

Containing approximately 6 acres.

T. 22 N., R. 7 E.

Those portions of Tract A more particularly described as (protracted):

Secs. 19 and 20, that portion within Alaska Native Claims Settlement Act Sec. 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143), twenty-five (25) feet each side of the centerline.

Sec. 27, that portion within Alaska Native Claims Settlement Act Sec. 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143), twenty-five (25) feet each side of the centerline, excluding U.S. Survey No. 4325;

Sec. 28, NE $\frac{1}{4}$, E $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, that portion within Alaska Native Claims Settlement Act Sec. 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143), twenty-five (25) feet each side of the centerline;

Sec. 29, that portion within Alaska Native Claims Settlement Act Sec. 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143), twenty-five (25) feet each side of the centerline;

Sec. 34, that portion within Alaska Native Claims Settlement Act Sec. 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143), twenty-five (25) feet each side of the centerline, excluding U.S. Survey Nos. 4325 and 6889.

Containing approximately 10 acres.

T. 21 N., R. 8 E.

Those portions of Tract A more particularly described as (protracted):

Secs. 18, 19, and 20, that portion within Alaska Native Claims Settlement Act Sec. 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143), twenty-five (25) feet each side of the centerline;

Sec. 29, that portion within Alaska Native Claims Settlement Act Sec. 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143), twenty-five (25) feet each side of the centerline; Secs. 32 and 33, that portion within Alaska Native Claims Settlement Act Sec. 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143), twenty-five (25) feet each side of the centerline.

Containing approximately 11 acres.

Aggregating approximately 30 acres.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the TUNDRA TIMES. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until September 12, 1988, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Stanley H. Bronczyk,

Chief, Branch of Doyon Adjudication.

[FR Doc. 88-18133 Filed 8-10-88; 8:45 am]

BILLING CODE 4310-JA-M

[CO-050-4333-8]

Notice of Plant Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Planning amendment; draft Arkansas River recreation management plan and environmental analysis.

SUMMARY: Notice is hereby given that the Bureau of Land Management, U.S. Department of Interior, has prepared a draft plan amendment/environmental assessment which addresses new issues and concerns regarding recreation management. The area involved lies along the Arkansas River corridor between Leadville and Pueblo, Colorado. This document called the Arkansas River Recreation Management Plan proposes to amend the existing Royal Gorge Management Framework Plan. During November and December, 1987, nine public scoping meetings were held to receive public reaction to a

proposal that the Colorado Division of Parks and Outdoor Recreation be given authority to manage river related recreation on BLM administered public lands along the Arkansas River. All comments, opinions and concerns received during the scoping meetings or by mail following the meeting has been recorded, analyzed and made a part of the formal record. The substantive information has been used during development of the plan. The draft Arkansas River Recreation Management Plan which includes the Colorado Division of Parks and Outdoor Recreation proposal and three other alternatives will be available for public review and comment from August 15 thru September 30, 1988.

FOR FURTHER INFORMATION CONTACT:

A copy of the plan maybe reviewed or obtained in person or by mail after August 15, 1988, from the Bureau of Land Management, Royal Gorge Resource Area, P.O. Box 311, 3170 East Main, Canon City, Colorado, 81212, (719) 275-0631 and other locations listed below:

Colorado Division of Parks and Outdoor Recreation, 1313 Sherman Street, Room 618, Denver, Colorado 80203, (303) 866-2771.

Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7076, (303) 236-1721.

DATES: Written comments on the document should be submitted by September 30, 1988 to Area Manager, Bureau of Land Management, Royal Gorge Resource Area, at the same address shown above.

Public hearings have been scheduled at 2 p.m. and 7 p.m. on the following days:

September 7, 1988, Ramada Inn., NW, I-70 Service Road North, Wheat Ridge, Colorado. (located at the intersection of I-70 and Kipling Street.)

September 12, 1988, Fremont County Court House Auditorium, 600 Macon Avenue, Canon City, Colorado.

September 16, 1988, Buena Vista Community Building, 715 E. Main Street, Buena Vista, Colorado. An informal open house to answer any questions from the public will begin 1 hour before each hearing. Requests to present oral statements at the public hearings should be received in the Royal Gorge Resource Area Office, P.O. Box 311, Canon City, Colorado 81212, 2 days prior to the meeting. Requests should identify the organization represented and should be signed by the prospective speaker. The cut-off date is necessary so a list of

speakers can be available on the day of the public hearing.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 88-18135 Filed 8-10-88; 8:45 am]

BILLING CODE 4310-JB-M

[AA-340-08-4333-02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information, related forms, and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: Special Recreation Application and Permit Form, 43 CFR Part 8372.

OMB Approval Number: 1004-0119.

Abstract: Respondents supply identifying information and data on proposed commercial, competitive, or individual recreational use, respectively, when required, to determine eligibility for a permit. This information allows the Bureau of Land Management (BLM) to authorize requested use and determine appropriate fees. This information will also be used to tabulate recreation use data for the annual Federal Recreation Fee Report as required by the Land and Water Conservation Act.

Bureau Form Number: 8370-1.

Frequency: Annually at selected recreation areas and sites.

Description of Respondents: Recreation visitors to areas of the public lands and related waters where special recreation permits are required.

Estimated Completion Time: 27 minutes.

Annual Responses: 6,000.

Annual Burden Hours: 1,000.

Bureau Clearance Officer: Rick Iovaine, 202-653-8853.

Date: July 22, 1988.

Dean Stepanek,

Assistant Director—Land and Renewable Resources.

[FR Doc. 88-18162 Filed 8-10-88; 8:45 am]

BILLING CODE 4310-84-M

[ID-010-08-4410-08]

Proposed Area of Critical Environmental Concern Designation; Salmon Falls Creek Canyon, ID**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of Proposed Area of Critical Environmental Concern (ACEC) designation.

SUMMARY: The Boise District, Bureau of Land Management (BLM), has prepared a draft amendment to the Jarbidge Resource Management Plan (RMP) and the Twin Falls Management Framework Plan (MFP). The draft amendment includes a proposal to designate a 30-mile stretch of Salmon Falls Creek Canyon as an ACEC. This notice is issued pursuant to 43 CFR 1610.7-2(b), which provides for a 60-day public comment period on any proposed ACEC designation.

DATE: The comment period will be open until October 11, 1988.**ADDRESS:** Written comments may be submitted to the Bureau of Land Management, Boise District Office, 3948 Development Avenue, Boise, Idaho 83705.**FOR FURTHER INFORMATION CONTACT:** Gary Carson, Jarbidge Resource Area Manager, or Terry Costello, Chief, Planning and Environmental Assistance Staff, at the above address or call (208) 334-1582.

SUPPLEMENTARY INFORMATION: Approval of the land use plan amendment would constitute formal designation of the proposed Salmon Falls Creek Canyon ACEC. Salmon Falls Creek forms a boundary between the Boise and Burley BLM districts; therefore, the ACEC would lie partially within each district. The proposed ACEC extends along Salmon Falls Creek, between the canyon rims, from Salmon Falls Dam on the south and the Balanced Rock road on the north. It would include approximately 3,000 acres of public lands presently identified in the Twin Falls MFP (Burley District) for protection as the Salmon Falls Creek Natural Area, and approximately 2,947 acres of public lands presently identified in the Jarbidge RMP for protection as an Outstanding Natural Area. BLM Manual guidance (1623.31A1) states that any Outstanding Natural Area is to be evaluated as an ACEC, following RMP procedures. This proposed land use plan amendment fulfills that requirement.

Designation of the ACEC would not be expected to result in any changes in management of the area, but would merely continue existing land use

decisions to protect the area's natural and primitive characteristics. Specifically, the proposed ACEC would be subject to the following resource use limitations: (1) Exclude livestock grazing, (2) avoid all utility right-of-way, (3) close the area to agricultural entry, (4) close the area to all motorized vehicles, and (5) restrict all mechanized fire suppression equipment from the canyon. The entire proposed ACEC would continue to be managed for its natural and scenic values.

Gene L. Schloemer,
Associate District Manager.

[FR Doc. 88-18163 Filed 8-10-88; 8:45 am]

BILLING CODE 4310-GG-M

[AZ-020-08-4321-01; A 23376]

Realty Action; Exchange of Public Lands; Apache County, AZ**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Correction notice.

The notice of realty action published on July 6, 1988 in *Federal Register* document 88-15107 is corrected as follows:

Page 25388, column 1, line 37 should read T. 18 N., R. 20 E.

Herman L. Kast,
Acting District Manager.

Date: August 3, 1988.

[FR Doc. 88-18164 Filed 8-10-88; 8:45 am]

BILLING CODE 4310-32-M

[NV-020-4333-12]

Camping Stay Limits on Public Lands Within the Winnemucca District, WA**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Camping stay limits on public lands within the Winnemucca District.

SUMMARY: Person(s) may occupy a site or multiple sites within a five (5) mile radius on public lands not closed or otherwise restricted to camping within the Winnemucca District for a total period of not more than fourteen (14) days during any twenty-eight (28) day period. Following the fourteen (14) day period, persons may not relocate within a distance of five (5) miles of the site that was previously occupied until completion of the twenty-eight (28) day period. The fourteen (14) day limit may be reached either through a number of separate visits or through a period of continuous occupations of a site. Under special circumstances and upon request, the authorized officer may give

permission for extension of the fourteen day limit.

Additionally, no person may leave personal property unattended in designated campgrounds, recreation developments or elsewhere on public lands within the Winnemucca District for a period of more than seventy-two (72) hours without written permission from the authorized officer.

DATE: This camping stay limit will be effective August 11, 1988.

FOR FURTHER INFORMATION CONTACT: District Manager, Winnemucca District Office, 705 East Fourth Street, Winnemucca, Nevada 89445, telephone (702) 623-3676.

SUPPLEMENTARY INFORMATION: This camping stay limit is being established in order to assist the Bureau in reducing the incidence of long-term occupancy trespass being conducted under the guise of camping on public lands within the Winnemucca District. Of equal importance is the problem of long-term camping, which precludes equal opportunities for other members of the public to camp in the same area, which creates user conflicts.

Authority for this stay limit is contained in CFR Title 43, Chapter II, Part 8365, Subparts 8365.1-2, 8365.1-6 and 8365.2-3.

Robert Neary,
Acting District Manager.

Dated: August 1, 1988.

[FR Doc. 88-18165 Filed 8-10-88; 8:45 am]

BILLING CODE 4310-HC-M

[NM-940-08-4520-12]

New Mexico; Filing of Plat of Survey

July 29, 1988.

The plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on July 29, 1988.

A survey representing Mineral Survey No. 2320, the Wild Bill Mine, in the Pinos Altos Mining District, New Mexico Principal Meridian, New Mexico.

The survey was requested by the Thomas A. McDermott, claimant.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of \$2.50 per sheet.

John P. Bennett,
Chief, Branch of Cadastral Survey.

[FR Doc. 88-18166 Filed 8-10-88; 8:45 am]

BILLING CODE 4310-FB-M

[ID-943-08-4220-11; I-15356 et al]

Proposed Continuation of Withdrawal; Idaho**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice.

SUMMARY: The Bureau of Land Management proposes that 480 acres of land withdrawn for Public Water Reserve Nos. 107 and 28, continue for an additional 20 years. The water involved would remain withdrawn and the lands would remain closed to surface entry, but would be opened to nonmetalliferous mining through this action. The lands have been and will continue to be open to the mineral leasing laws and the location of metalliferous minerals.

DATE: Comments should be received by October 26, 1988.

ADDRESS: Comments should be sent to, Idaho State Director, Bureau of Land Management, 3380 Americana Terrace Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: Larry Lievsay, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1735.

The Bureau of Land Management proposes that the existing land withdrawals made by the Executive Orders dated May 31, 1915, and April 17, 1926, and further designated by Secretarial Order of Interpretation No. 160, dated April 8, 1932; Secretarial Order of Interpretation 131, dated June 5, 1930; Secretarial Order of Interpretation No. 125, dated March 15, 1930; BLM Order of Interpretation dated May 26, 1955, and Secretarial Order of Interpretation No. 175, dated January 23, 1933, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, on the following-described land:

Boise Meridian, Idaho

[I-15356]

Public Water Reserve No. 107
Secretarial Order of Interpretation No. 160
T. 8 S., R. 38 E.
Sec. 24, SW $\frac{1}{4}$ SW $\frac{1}{4}$.

[I-15370]

Public Water Reserve No. 107
Secretarial Order of Interpretation No. 175
T. 8 S., R. 38 E.
Sec. 24, NW $\frac{1}{4}$ SW $\frac{1}{4}$.

[I-15358]

Public Water Reserve No. 107
BLM Order of Interpretation
T. 8 N. R. 28 E.
Sec. 8, E $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 23, NE $\frac{1}{4}$.

[I-15357]

Public Water Reserve No. 107
Secretarial Order of Interpretation No. 125
T. 2 N., R. 24 E.
Sec. 28, NW $\frac{1}{4}$ NE $\frac{1}{4}$.

[I-14544A]

Public Water Reserve No. 28
Executive Order dated May 31, 1915
T. 6 S., R. 35 E.
Sec. 33, SE $\frac{1}{4}$ NE $\frac{1}{4}$.

[I-15377]

Public Water Reserve No. 107
Secretarial Order of Interpretation No. 131
T. 7 S., R. 36 E.
Sec. 9, SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$.

The areas described aggregate 480 acres in Bannock, Caribou, and Butte Counties.

The purpose of the withdrawals is to protect the springs located on the lands for livestock water use.

The withdrawals segregate the lands from the location of nonmetalliferous minerals and operation of the land laws, but not the mineral leasing laws, and withdraw the public waters involved. The lands would be opened to nonmetalliferous mining location through this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the Federal Register. The existing withdrawals will continue until such final determination is made.

William E. Ireland,*Chief, Realty Operations Section.*

Dated: August 4, 1988.

[FR Doc. 88-18167 Filed 8-10-88; 8:45 am]

BILLING CODE 4310-GG-M

[CO-050-4322-02]

Canon City District Grazing Advisory Board Meeting**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory

Committee Act (Pub. L. 463), that a meeting of the Canon City District Grazing Advisory Board will be held at 10 a.m. Friday, September 23, 1988, at the District Office of the Bureau of Land Management, 3170 East Main Street, Canon City, Colorado. The purpose of this meeting will be:

1. Introduced of new members of the Board.
2. Election of Board officers.
3. Prioritization of Range Improvement projects.
4. Initiate, conducted and settle business pertaining to the expenditure of Range Betterment Funds.
5. Update Board on status of ongoing resource management planning efforts.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public. Any member of the public may file with the Board a written statement concerning matters to be discussed. Minutes of the meeting will be made available for public inspection 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT:

Donnie R. Sparks, District Manager, Bureau of Land Management, 3170 East Main Street, Canon City, Colorado 81212 or telephone at (719) 275-0631.

Stuart L. Freer,*Associate District Manager.*

[FR Doc. 88-18136 Filed 8-10-88; 8:45 am]

BILLING CODE 4310-JB-M

[NM-030-08-4341-02]

Las Cruces District Advisory Council**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of meeting.

SUMMARY: A meeting of the Las Cruces District Advisory Council will be held September 13, 1988, in the Aspen West Room, Mesilla Valley Inn, 901 Avenida de Mesilla, Las Cruces, New Mexico. The meeting will begin at 10:00 a.m. There will be an opportunity for public comment at 1:30 p.m. It is expected the meeting will adjourn by 3:30 p.m. The following topics are on the agenda: Approval of previous minutes, discussion of hazardous waste management, update on District planning efforts, update on District exchanges, and Boots and Saddles Trail legislation discussion.

ADDRESS: Aspen West Room, Mesilla Valley Inn, 901 Avenida de Mesilla, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT:

H. James Fox, District Manager, Las Cruces District Office, Bureau of Land

Management, 1800 Marquess Street, Las Cruces, New Mexico 88005 or at (505) 525-8228.

SUPPLEMENTARY INFORMATION: The Council is authorized by the Federal Land Policy and Management Act and chartered by the Secretary of the Interior to provide citizen advice to the District Manager on matters relating to the management of public lands and resources.

Robert R. Calkins,

Acting District Manager, August 2, 1988.

[FR Doc. 88-18137 Filed 8-10-88; 8:45 am]

BILLING CODE 4310-FB-M

[AZ-920-08-4212-14; A-21218]

Conveyance of Public Land; La Paz County, AZ

August 5, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of the conveyance of public land to La Paz County.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713, 1719), La Paz County has purchased by noncompetitive direct sale, at the fair market value of \$44,000, plus \$50.00 for the purchase of the mineral estate, the following described land:

Gila and Salt River Meridian, Arizona

T. 7 N., R. 19 W.,
Sec. 13, SW 1/4.

The area described contains 160.00 acres in La Paz County, Arizona.

The purpose of this notice is to inform the public and interested State and local government officials of the transfer of land out of Federal ownership.

Marsha Luke,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-18138 Filed 8-10-88; 8:45 am]

BILLING CODE 4310-32-M

[OR-050-4212-11; GP8-217; OR-44210]

Realty Action; Recreation and Public Purposes Lease in Deschutes County, OR

August 4, 1988.

AGENCY: Bureau of Land Management, Interior.

The following described lands have

been examined and found to be suitable for lease under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*).

T. 17 S., R. 14 E., W.M. Deschutes County, Oregon

Section 35: W 1/2 SW 1/4 NW 1/4 NW 1/4..... 5 ac.

These lands are being offered to the Deschutes County Department of Public Works for operation of a solid waste transfer station. The lease term would be five years subject to renewal until such time as the classification can be changed and conveyance made to Deschutes County.

The site is adjacent and west of the existing R&PP lease authorizing the Alfalfa Landfill which will be closed and reclaimed.

The transfer station would provide the community with a site for disposal of solid waste which would then be hauled to the Knott Landfill near Bend.

Waste material would not be disposed on or under public lands.

This Decision/Notice is based on the following:

(1) The lands have been found to be valuable for public purposes and are currently classified for R&PP.

(2) The land is not of National Significance and not essential to any Bureau of Land Management program.

(3) The proposed use is in conformance with BLM, STATE and LOCAL Land Use Planning.

(4) The proposed action will not have significant or controversial environmental effects.

(5) The proposed use of these lands will provide a service to the community and deter unauthorized dumping on public lands.

(6) This lease of land to Deschutes County is in conformance with the policy established by the Secretary of Interior to provide needed lands for community development.

The granting of the lease will not be adverse to any known public or private interest. The lease will be subject to the following terms and conditions:

(1) Operation of the transfer station will be conducted in accordance with standards established by the State Department of Environmental Quality.

(2) Waste material shall not be deposited on or under public land.

(3) The lessee is prohibited from accepting hazardous waste or substances as defined in ORS 466.005, RCRA (42 USCA 6903) and CERCLA (42 USCA 9601).

(4) Any prohibited wastes discovered at the transfer site shall be immediately removed and transported to a disposal

site authorized to accept such waste. In the event hazardous wastes are discovered, the lessee shall notify the Authorized Officer. Hazardous wastes must be removed from the site within 48 hours, unless otherwise approved by BLM.

The previous classification of the lands for lease to Deschutes County, under the provisions of the above cited authority has segregated them from all other types of appropriation, including locations under the mining laws, except as applicable under the Mineral Leasing Laws.

Detailed information concerning this application, including the field reports and environmental assessment, are available for review at the Prineville District Office, P.O. Box 550, Prineville, OR 97754.

Petition for classification OR-44210 is approved as to the land described above.

Dated: August 4, 1988.

Donald L. Smith,

Acting District Manager, Prineville, District Office.

[FR Doc. 88-18139 Filed 8-10-88; 8:45 am]

BILLING CODE 4310-33-M

[ES-940-08-4520-13; ES-039019, Group 22]

Filing of Plats of Dependent Resurvey, Subdivisions of Sections and Survey of the Rend Lake Acquisition Boundary; Illinois

August 3, 1988.

1. The plat, in six sheets, of the dependent resurvey of a portion of the south boundary, a portion of the subdivisional lines, and the survey of the subdivision of sections 4, 5, 7, 8, 17, 18, 19, 30 and 31, and the Rend Lake acquisition boundary, Township 5 South, Range 3 East, Third Principal Meridian, Illinois, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on September 19, 1988.

2. The dependent resurvey and survey was made at the request of the Corps of Engineers.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey and survey must be sent to the Deputy State Director for Cadastral Survey and Support Services, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., September 19, 1988.

4. Copies of the plats will be made available upon request and prepayment of the reproduction fee of \$4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 88-18140 Filed 8-10-88; 8:45 am]

BILLING CODE 4310-GJ-M

[ES-940-08-4520-13; ES-039020, Group 98]

Filing of Plat of Survey of an Island; Michigan

August 4, 1988.

1. On August 3, 1988, the plat representing the survey of an island in Straits Lake, which was omitted from the original survey, was accepted. It will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m., on September 19, 1988.

The tract shown below describes the island omitted from the original survey.

Michigan Meridian, Michigan

T. 44 N., R. 18 W.

Tract 37.

2. The island described above is separate and distinct yet similar in all respects to that of the adjacent surveyed lands.

3. Tract 37 rises approximately 24 feet above the ordinary high water mark of Straits Lake and is composed of sandy woodland soil. Tree species consist of white pine, red pine, hemlock, birch, cedar, maple and alder.

4. The present water level of the lake compares favorably with that of the original meander line, therefore, the elevation and upland character of the island along with the depth and width of the channel between the upland and the island are considered evidence that the island did exist in 1837, the year Michigan was admitted into the Union.

5. Tract 37 is more than 50 percent upland in character within the purview of the Act of September 28, 1850 (9 Stat. 519). Therefore, the island is held to be public land.

6. Except for valid existing rights, this island will not be subject to application, petition, location, or selection under any public law until September 19, 1988.

7. Interested parties protesting the determination that this island is public land of the United States, must present valid proof showing that the island did not exist at the time of statehood or that it was attached to the mainland at the time of the original survey. Such protests must be submitted in writing to the Deputy State Director for Cadastral Survey, Bureau of Land Management, Eastern States Office, prior to 7:30 a.m., September 19, 1988.

8. All inquiries concerning the color-of-title claims should be filed with the Deputy State Director for Lands and Renewable Resources, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304, after September 19, 1988.

9. Copies of the plat will be made available upon request and prepayment of the reproduction fee of \$4.00 per copy. Copies of the plats will be made available upon request and prepayment of the reproduction fee of \$4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 88-18141 Filed 8-10-88; 8:45 am]

BILLING CODE 4310-GJ-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-726734

Applicant: Steve Martin, Acton, CA.

The applicant requests a permit to export five captive-born wolves to Burnaby, British Columbia, Canada, for the purpose of educating to public about the conservation needs of the species. The wolves will then be returned to the U.S.

PRT-729898

Applicant: Kansas City Zoological Gardens, Kansas City, MO.

The applicant requests a permit to import one male captive born maned wolf (*Chrysocyan brachyurus*) from Halle Zoo, Halle, East Germany for enhancement of propagation and survival of the species.

Applicant: National Zoological Society, Washington, DC.

The applicant requests a permit to import up to 30 captive born golden lion tamarins (*Leontopithecus rosalia*) from various institutions for physical examinations, marking, radio-tagging and re-exportation to Brazil for reintroduction to the wild as part of a golden lion tamarin conservation program that will enhance the propagation and survival of the species in the wild. The permits requested are listed below:

- Import 2 males, 4 females and young tamarins from Skansen Zoo, Stockholm, Sweden (PRT-729917).
- Import 1 male, 3 females and young tamarins from Frankfurt Zoological

Garden, Frankfurt, Federal Republic of Germany (PRT-729918).

—Import 3 males, 3 females and young tamarins from Pencynor Wildlife Park, Clifrew, Wales (PRT-729919).

—Import 3 males, 4 females and young tamarins from Marwell Zoological Park, Colden Common, England (PRT-729920).

PRT-729899

Applicant: Donald Rogers, Darien, NY.

The applicant requests a permit to purchase 3 males and 3 females captive-born Laysan ducks (*Anas laysanensis*) from Ed Jordan, Cape Elizabeth, ME for enhancement of propagation and survival of the species.

PRT-730061

Applicant: Ken Wynne, Anchorage, AK.

The applicant requests a permit to import one male sport-hunted bontebok (*Damalisca dorcas dorcas*) culled from the captive-herd of V.L. Pringle, Huntley Glen, Bedford, Cape Province, Republic of South Africa for enhancement of propagation.

PRT-728131

Applicant: Peter Pritchard, Maitland, FL.

The applicant requests a permit to import salvaged specimens of turtles and tortoises (Order Testudines) found dead, including specimens killed by local inhabitants for food or other purposes, in countries worldwide for the purpose of scientific research. The salvaged material will be incorporated into the applicant's collection and made available to researchers.

PRT-730091

Applicant: Duane Patrick, Bradford, TN.

The applicant requests a permit to purchase two pair of Hawaiian geese (=nene) *Nesochen* (=Branta) *sandvicensis* born in captivity from Doug Hopp, Sparta, Wisconsin, for enhancement of survival and propagation of the species.

PRT-730094

Applicant: Barney Lewis, Meridian, ID.

The applicant requests a permit to import two pair of captive born Chinese monal pheasants (*Lophophorus lhuysii*) from Bert Willemsen, Surrey, Canada, for enhancement of propagation and survival of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K. Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: August 3, 1988.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88-18179 Filed 8-10-88; 8:45 am]

BILLING CODE 4310-AN-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the collection of information requirement and supporting documentation may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the collection of information should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395-7340; with copies to Gerald Rhodes, Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091.

Title: Operations in the Outer Continental Shelf for Minerals Other Than Oil, Gas, and Sulphur, 30 CFR Part 282.

OMB Approval Number: N/A.

Abstract: Under the proposed rule, respondents will provide certain information to the Minerals Management Service (MMS) concerning mining operations in the Outer Continental Shelf (OCS) for minerals other than oil, gas, and sulphur. The MMS will use this information to ascertain that Federal OCS lessees and/or holders of a right of use and easement are complying with the rules governing OCS mining operations contained in proposed 30 CFR Part 282.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Federal OCS lessees and/or holders of a right of use and easement.

Estimated Completion Time: 13.3.

Annual Responses: 15.

Annual Burden Hours: 201.

Bureau Clearance Officer: Dorothy Christopher, (703) 435-6213.

Date: July 19, 1988.

Richard B. Krah, Jr.,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 88-18168 Filed 8-10-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Brooklyn Union Exploration Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Brooklyn Union Exploration Company, Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5197, Block 280, South Marsh Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Freshwater City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 5, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section,

Exploration/Development Plans Unit; Telephone (504) 736-2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: August 5, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-18142 Filed 8-10-88; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31302]

Norfolk Southern Corp. and Lamberts Point Barge Co., Inc.—Joint Petition for Declaratory Order

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Petition filing, and institution of proceeding.

SUMMARY: Norfolk Southern Corporation (NS) and Lamberts Point Barge Company, Inc. (LPB) filed a joint petition for a declaratory order under 5 U.S.C. 554(e) seeking a Commission determination that NS's controlling interest in LPB and, in turn, LPB's ownership of a vessel leased under a "demise" or "bareboat" charter will not violate provisions of the Panama Canal Act, 49 U.S.C. 11321.

DATES: An original and 10 copies of comments must be filed by August 31, 1988. A copy of comments must be served on joint petitioners' representative at the address below. An original and 10 copies of joint petitioners' replies to comments must be filed by September 20, 1988. Joint

petitioner must serve their replies on all parties who file comments.

ADDRESSES: Send pleadings referring to Finance Docket No. 31301 to:

- (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
- (2) Joint petitioners' representative: F. Blair Wimbush, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510-2191.

The joint petition may be inspected at the Commission's headquarters in Washington, DC. Copies are also available from joint petitioners' counsel, F. Blair Wimbush, at the above address. **FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275-7345.

[TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: NS owns LPD and two Class I railroads. LPB owns an ocean-going barge, *Thoroughbred Topper*, (the Vessel) which is leased under demise charter to Gulfcoast Transit Company (Charterer) for a term of 1-year and with a provision for two 1-year renewals. The demise charter provides that LPB retains legal title but grants Charterer exclusive possession, control and use of the Vessel subject to a restriction that Charterer may not use the Vessel for movement over any route that might violate section 11321.

Petitioners seek the declaratory order so that they may remove this restriction in the lease. They maintain that it would improve Charterer's flexibility in using the Vessel if the Commission were to declare that petitioners' interest in the Vessel as demised to Charterer does not violate section 11321 regardless of the routes used. NS asserts that its interest in LPB, and LPB's ownership of a vessel subject to a demise charter are so far removed from the conduct of the business in which the Vessel is used that neither NS nor LPB can possibly reduce competition over any water route, because NS cannot control the services or prices offered by the demise Charterer. According to petitioners, there is no opportunity under the demise charter for petitioners to use the Vessel to undermine barge operators or to interfere with barge transportation in any way. Petitioners concede that removal of the route restriction could allow petitioners and the Vessel to compete for the same traffic but, they argue, permitting the Vessel to operate over any route would be in the public interest and not reduce competition. Petitioners maintain that, if the route restrictions are removed, competition by ocean-going barges will be increased by the potential operation of a new entrant

in the market as Charterer could compete for the trade between particular points that it is now prevented from handling.

Dated: August 3, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-18038 Filed 8-10-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-167 (Sub-No. 1089X)]

Exemption; Consolidated Rail Corp.—Abandonment Exemption—Lycoming and Tioga Counties, PA

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 62.2-mile line of railroad between the Jersey Shore Block Limit Station (approximately milepost 168.1) and the north side of Undergrade Bridge No. 105.9 over Marsh Creek (approximately mile post 105.9), in Lycoming and Tioga Counties, PA.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective September 14, 1988, (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues¹ and formal

¹ A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the

expressions of intent to file an offer of financial assistance under 49 CFR 115.27(c)(2)² must be filed by August 22, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by August 30, 1988, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles E. Mechem, Consolidated Rail Corporation, 1138 Six Penn Center Plaza, Philadelphia, PA 19103.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environment assessment (EA). SEE will serve the EA on all parties by August 15, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 3, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-18037 Filed 8-10-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31259¹]

Central Vermont Railway, Inc.; Petition for Exemption; Acquisition and Operation of Certain Interests in Rail Lines From the National Railroad Passenger Corp.

AGENCY: Interstate Commerce Commission.

notice of exemption. See Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines* (not printed), served March 8, 1988.

² See *Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance*, 4 I.C.C.2d 164 (1987), and final rules published in the *Federal Register* on December 22, 1987 (52 FR 48440-48446).

¹ Related to Finance Docket No. 31250, *National Railroad Passenger Corporation—Conveyance of Boston and Maine Corporation Interests in Connecticut River Line in Vermont and New Hampshire*.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts under 49 U.S.C. 10505 from the requirements of 49 U.S.C. 11343, the acquisition and operation by Central Vermont Railway, Inc. (CV) of a 48.8-mile railroad line and related interests in New Hampshire and Vermont acquired by the National Railroad Passenger Corporation (Amtrak) from the Boston and Maine Corporation (B&M) in Finance Docket No. 31250 pursuant to an application under section 402(d) of the Rail Passenger Service Act, 45 U.S.C. 562(d), for conveyance of the Connecticut River Line and certain other property interests belonging to B&M, so that Amtrak may resume its Montreale passenger service over that line. CV's exemption is subject to historic and employee protective conditions, and CV is further responsible for all labor protection expenses arising from the transaction in Finance Docket No. 31250.

DATES: The exemption will be effective on August 12, 1988. Petitions for reconsideration must be filed by August 31, 1988.

ADDRESSES: Send pleadings referring to Finance Docket No. 31259 to:

- (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
- (2) Petitioner's representative: Robert P. vom Eigen, Hopkins, Sutter, Hamel & Park, 888 Sixteenth Street, NW., Washington, DC 20006

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. (TDD for hearing impaired: (202) 275-1721)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's consolidated decision in this and F.D. 31250. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup for Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: August 4, 1988

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Chairman Gradison dissented with a separate expression. Vice Chairman Andre was absent and did not participate.

Noreta R. McGee,

Secretary.

[FR Doc. 88-18159 Filed 8-10-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR**Mine Safety and Health Administration****Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines; Final Report**

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Advisory committee final report and notice of further agency action.

SUMMARY: This notice announces the availability of the final report of the Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines, and provides information of further agency action based on the Advisory Committee recommendations contained in the report.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203; phone (703) 235-1910.

SUPPLEMENTARY INFORMATION: Pursuant to the requirements contained in section 101(a)(1) of the Federal Mine Safety and Health Act of 1977, the Mine Safety and Health Administration (MSHA) Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines has issued its final report to the Secretary of Labor. This report is available to interested members of the public. Copies of the report may be obtained upon request to Mr. Wayne Veneman, Office of Information and Public Affairs, Room 601, 4015 Wilson Boulevard, Arlington, Virginia 22203; phone (703) 235-1452.

The Advisory Committee was established by the Secretary of Labor and chartered pursuant to the provisions of the Federal Advisory Committee Act and the Federal Mine Safety and Health Act of 1977. As required by this charter, the Advisory Committee issued its final report to the Secretary in July 1988. The Report provides a set of recommendations on approval regulations, and health and safety standards related to the use of diesel-powered equipment in underground coal mines.

Pursuant to the requirements of section 101(a)(2) of the Federal Mine Safety and Health Act of 1977, MSHA will carefully review the report and develop a proposed rule which will address each of the recommendations made by the Advisory Committee. The

Agency expects to issue its proposed rule in December 1988.

Signed at Arlington, Virginia, this 5th day of August, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-18147 Filed 8-10-88; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES**Agency Information Collection Activities Under OMB Review**

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted by September 12, 1988.

ADDRESSES: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Miss Anne Cowperthwaite, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Miss Anne Cowperthwaite, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests a review of the revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h)

Title: Challenge III Grant Application Guidelines for FY 1990.

Frequency of Collection: One-time.

Respondents: State or local governments; Non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from non-profit organizations and State and local arts agencies that apply for funding under specific Challenge III program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 150.

Average Burden Hours per Response: 80.

Total Estimated Burden: 12,000.

Murray R. Welsh,

*Director, Administrative Services Division,
National Endowment for the Arts.*

[FR Doc. 88-18157 Filed 8-10-88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-400]

Carolina Power & Light Co., et al., Shearon Harris Nuclear Power Plant, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-63 to the Carolina Power & Light Company (CP&L or the licensee), for the Shearon Harris Nuclear Power Plant, Unit 1, located in Wake and Chatham Counties, North Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specifications (TS) relating to fuel enrichment.

The proposed action is in accordance with the licensee's applications dated February 1 and February 8, 1988, and previous submittals dated May 26, and November 2, 1987.

The Need for the Proposed Action

The proposed changes are needed so that the licensee can use higher enrichment fuel, and provides the flexibility of extending the fuel irradiation and permitting operation of longer fuel cycles.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications. The proposed revisions would permit use of fuel enriched with Uranium 235 in excess of 4 weight percent and up to 4.2 weight percent and the licensee would expect the fuel to be irradiated to levels above 33 gigawatt days per metric ton (GWD/MT) but not to exceed 60 GWD/MT. The safety considerations associated with reactor operation with higher enrichment and extended irradiation have been evaluated by the NRC staff. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. The increased burnup may slightly change the mix of fission products that might be released in the event of a serious accident but such small changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential nonradiological impacts of reactor operation with higher enrichment and extended irradiation, the proposed changes to the TS involve systems located within the restricted area, as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation are discussed in the attached staff assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," dated July 7, 1988. As indicated therein, the environmental cost contribution of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may in fact be reduced from those summarized in Table S-4 as set forth in 10 CFR 51.52(c).

Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the

proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement related to the operation of the Shearon Harris Nuclear Power Plant, Units 1 and 2," dated October 1983.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we concluded that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated February 1, and February 8, 1988, and submittals May 26 and November 2, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Richard B. Harrison Library, 1313 New Bern Avenue, Raleigh, North Carolina 27610.

Dated at Rockville, Maryland, this 3rd day of August 1988.

For the Nuclear Regulatory Commission.

Edward A. Reeves,

*Acting Director, Project Directorate II-1,
Division of Reactor Projects I/II, Office of
Nuclear Reactor Regulation.*

NRC Assessment of the Environmental Effects of Transportation Resulting From Extended Fuel Enrichment and Irradiation

Introduction

Several Licensees of light water reactors (LWRs) have submitted proposed license amendments to permit use of enriched fuel in excess of four (4) weight-percent uranium-235 and to extend fuel irradiation from the current limit of 33 Gigawatt Days/Metric Ton (GWD/MT) up to 60 GWD/MT. It is anticipated that, in time, almost all licensees of light water reactors will request approval to adopt increases in

irradiation levels and fuel enrichment. Paragraph (b) of 10 CFR 51.52 states, among other things, that the reactors using fuel enrichment greater than 4 weight-percent uranium-235 or where fuel irradiation exceeds 33 GWD/MT, the licensee shall provide a full description and detailed analysis of the environmental effects to transportation of fuel and wastes to and from the reactor, including values for the environmental impact under normal conditions of transport and for the environmental risk from accidents in transport. The Statement shall indicate that the values determined by the analysis represent the contribution of such effects to the environmental costs of licensing the reactor.

With respect to the issue, the staff published a Notice of Environmental Assessment and Finding of No Significant Impact for extended burnup fuel use in Commercial LWRs in the *Federal Register* (53 FR 6040), dated February 29, 1988. In the above cited notice, the staff concluded that the environmental impacts summarized in Table S-4 of 10 CFR 51.52 for the burnup level of 33 GWD/MT are conservative and bound the corresponding impacts for burnup level up to 60 GWD/MT and uranium-235 enrichments up to five percent by weight. The staff also concluded that there are no significant adverse radiological or non-radiological impacts associated with the use of extended fuel burnup and/or increased enrichment, and that this use will not

significantly affect the quality of the human environment. Moreover, pursuant to 10 CFR 51.31, the Commission determined that an environmental impact statement need not be prepared for this action.

The Staff is in the process of revising the regulations at 10 CFR 51.52 to reflect the findings published in the above cited *Federal Register* Notice. In the interim, in connection with its review of proposed license amendments to permit use of fuel enriched with uranium 235 in excess of 4 percent and up to 5 percent by weight and irradiated to levels above 33 GWD/MT and up to 60 GWD/MT, and pursuant to 10 CFR 51.52(b), the staff proposes to accept the following analysis of the environmental effects of the transportation of such fuel and waste until such time as the revision to the rule is issued.

Environmental Impacts of Transportation

In evaluating the environmental impacts of the use of extended irradiation of high enrichment fuel, the Commission has relied upon the following four studies dealing with the transportation impacts:

- (1) Pacific Northwest Laboratories' report NUREG/CR-5009, "Assessment of the Use of Extended Burnup Fuel in Light Water Power Reactors," dated February 1988, prepared for the Nuclear Regulatory Commission;
- (2) Nuclear Regulatory Commission's report WASH-1238, "Environmental

Survey of Transportation of Radioactive Materials to and from Nuclear Power Plants, dated December 1972;

(3) *Envirosphere Company Report AIF/NE SP-032, "The Environmental Consequences of Higher Fuel Burnup,"* dated June 1985, prepared for National Environmental Studies Project (NESP) and the Atomic Industrial Forum, Inc., with the participation of the Commission's staff; and

(4) Sandia National Laboratories (SNL) Draft Report NUREG/CR-2325, "The Transportation of Radiative Material (RAM) To and From U.S. Nuclear Power Plants," dated December 1983.

All four studies present the results of evaluation of transportation impacts for postulated traffic models. The results are presented for traffic density, radiological occupational risks, radiological public risks of normal transportation, and risks of transportation accidents. The Pacific Northwest Laboratories (PNL) report and the *Envirosphere Company* report present the environmental impacts for fuel irradiation levels extending up to 60 GWD/MT and enrichments up to 5 weight percent uranium-235. The PNL results appear to have been derived from the analysis presented in the NESP report.

Table I summarizes the results of traffic densities for transportation of fresh fuel, spent fuel, and other solid waste by truck, rail and barge used in the four studies.

TABLE I.—TRAFFIC DENSITIES SHIPMENTS PER REACTOR YEAR

Transportation mode	NUREG/CR-5009 (PNL)		NESP-032		WASH-1238	SNL ¹
	33 GWD/MT	60 GWD/MT	33 GWD/MT	60 GWD/MT	33 GWD/MT	33 GWD/MT
TRUCK.....	112	92	112	92	112	122
RAIL.....	10	6	10	6	10	23
BARGE.....	5	3	5	3		

¹ The report does not clearly state the assumptions regarding fuel enrichment and irradiation levels. However, since Table S-4 in 10 CFR 51.52 is based on 33 GWD/MT, the staff has assumed that SNL analysis must be based on the assumptions contained in 10 CFR 51.52, Table S-4.

The comparison of the results of traffic density analysis shows that there is a reasonable good correlation between the total number of shipments shown in SNL results and that shown in other reports for 33 GWD/MT. Both the PNL study and the NESP study show that there will be a reduction in the total number of shipments (fresh fuel, spent fuel, and low level wastes) when higher levels of irradiation (60 GWD/MT) are assumed. Such high irradiation levels may require that fuel enrichment be increased up to a maximum of 5 weight

percent. The reduction in the shipments is due to the fact that there will be fewer outages for fuel reloads resulting in reduced fuel shipments to the reactor and reduced spent fuel shipments from the reactor. However, there will be an increase in the shipment of low level solid wastes. Even when this increase in low level waste shipment is included with the shipment of fresh fuel and spent fuel, the total shipments for higher irradiation (60 GWD/MT) are still somewhat reduced from those at 33 GWD/MT. As a result of the reduction

in number of shipments, there should be some reduction in the estimated number of persons exposed. There should also be no significant change in heat generated per irradiated fuel cask and the weight restriction for transporting vehicle.

The discharged spent fuel at higher irradiation (60 GWD/MT) will have more long lived radionuclides per unit mass compared with the spent fuel irradiated at 30 GWD/MT. However, there is a smaller amount of annual spent fuel discharged. Since each spent

fuel package will meet the surface radiation level limits imposed by the transportation regulations and there are fewer packages being shipped, there will be an overall reduction in the impacts of normal transportation of spent fuel at higher irradiation levels. However, the normal transportation impacts of low level wastes will increase with increased irradiation level. This is due

to the fact that slight increases in cooling water activity could occur through increased inventory and gap release fraction. Because this activity would need to be removed to keep cooling water activity within licensed technical specification limits, a small increase in the quantity of low level wastes is estimated to occur. Both NUREG/CR-5009 and NESP-0032

conservatively assume a 20% increase in solid waste at 60 GWD/MT irradiation. Table II summarizes the combined environmental impacts of normal transportation of spent fuel, low level waste and new fuel activities at 33 GWD/MT and 60 GWD/MT as presented in NUREG/CR-5009 and NESP-0032.

TABLE II.—NORMAL TRANSPORTATION RADIOLOGICAL EXPOSURE RISK PERSON REM/REACTOR YEAR

Exposure type	NUREG/CR-5009 (PLN)		NESP-0032	
	33 GWD/MT	60 GWD/MT	33 GWD/MT	60 GWD/MT
Occupational	4.2 ¹	3	4.2	3
General Public	3.2 ¹	2.5	3.2	2.0
Total (Normal Transportation Exposures)	7.4	5.5	7.4	5.0

¹ These values are identical to the rounded off values reported in Table S-4 of 10 CFR 51.52, and form the basis of the Commission's determination of no significant adverse environmental impacts of transportation of fuel and wastes to and from nuclear reactor sites.

The above results show that there is in fact an overall reduction in the radiological impacts of normal transportation (the calculated impacts are lower than the values reported in Table S-4).

Environmental impacts also result from transportation accidents. The extended irradiation of fuel will result in an increase in the actinide and fission product inventory in the fuel. Since the spent fuel is transported after an extended storage at the site (5 years), only the long lived fission products and actinides would remain to contribute to the risk. The PNL analysis shows that the overall effect of a higher inventory of actinides and long lived fission products would be to increase the projected dose in the event of an accident involving spent fuel by a factor of about 2.7, when irradiation is increased from 33 GWD/MT to 60 GWD/MT. However, because the increased irradiation will correspondingly decrease the amount of the spent fuel discharged, the probability of a transportation accident will be reduced by an amount roughly

equal to the ratio of irradiation levels. The overall effect of the increase in irradiation to 60 GWD/MT would be to increase the radiological risk of spent fuel transportation accidents by about 50%.

As stated earlier, the amount of low level waste is conservatively assumed to increase by about 20% when irradiation levels are increased to 60 GWD/MT. No significant change in composition of low level wastes is expected. Therefore, the transportation accident risks of low level waste shipment would increase by 20%. The transportation risk associated with new fuel shipments would decrease as shipments decreased due to extended burnup.

Although Table S-4 indicates that the radiological risk of accidents is small and not capable of quantification, the radiological risks of transportation accidents were calculated in NUREG/CR-2325. For the 1985 transportation model, the SNL calculated radiological risk of 1.8 person-rem/reactor year. The staff has conservatively assumed from the PNL analyses that the higher

irradiation (60 GWD/MT) would result in a 50 percent increase in radiological risks due to transportation of all kinds of radioactive waste (even though for low level waste the increase in expected to be 20% or less and for new fuel the risk would decrease with the assumption). SNL calculated risk of 1.8 person-rem/reactor year could increase to 2.7 person-rem/reactor year at 60 GWD/MT irradiation level. When accident risks at 33 GWD/MT (SNL value) and 60 GWD/MT (Scaled SNL value) are added to normal impacts (PNL and NESP-0032 value in Table II), the overall radiological risks at higher irradiation levels are still lower than the risks at 33 GWD/MT irradiation levels. This is shown on Table III.

The analyses presented in NESP-0032 show that the radiological environmental impacts of transportation accidents are small at 33 GWD/MT and remain small at 60 GWD/MT. The NESP-0032 finding is consistent with finding in WASH-1238 and the results summarized in Table S-4 of 10 CFR 51.52.

TABLE III.—TRANSPORTATION RADIOLOGICAL EXPOSURE RISK PERSON REM/REACTOR YEAR

	NUREG/CR-5009 (PNL)		NESP-0032	
	33 GWD/MT	60 GWD/MT	33 GWD/MT	60 GWD/MT
Normal Transportation Exposures	7.4	5.5	7.4	5.0
Accident Exposures (from SNL)	1.8	2.7	1.8	2.7
	9.2	8.2	9.2	7.7

The non-radiological impacts of transportation accidents are presented in Table S-4 as follows:

- (a) 1 fatality in 100 reactor years.
- (b) 1 non-fatal injury in 10 reactor years.
- (c) \$475 property damage per reactor year.

As seen in Table 1, the overall shipments of fresh fuel, spent fuel, and low level waste are slightly reduced. Therefore, the likelihood of an accident would decrease with the decreased number of shipments, while the non-radiological consequences of transportation accidents would remain unchanged.

In summary, the environmental impacts of extended irradiation up to 60 GWD/MT and increased enrichment up to 5 weight percent are bounded by the impacts reported in Table S-4 of 10 CFR Part 51. Table IV shows the summary of the comparison of impacts. Table IV also supports the staff's conclusions concerning transportation impacts in the Federal Register Notice 53 FR 6040.

TABLE IV.—SUMMARY COMPARISON OF TRANSPORTATION IMPACTS

	Table S-4	60 GWD/MT and up to 5 percent enrichment
Traffic Density		
Truck.....	Less than 1 per day.	No increase.
Rail.....	Less than 3 per month.	No increase.
Radiological Risk—Person REM per year:		
Normal Transportation.....	7.....	5.0-5.5
Accidents.....	1.8.....	2.7
Total.....	8.8.....	7.7-8.2
Non-Radiological Risk.		
1 Fatality/100 Reactor Years.....		No increase.
1 Non-Fatal Injury/10 Reactor Years.....		No increase.
\$475 Property Damage/Reactor Year.....		No increase.

The above evaluation sets forth the changes resulting from increased enrichment (up to 5 weight percent) and extended irradiation (up to 60 GWD/MT), in the environmental impacts of transportation of fuel and wastes to and from the light water reactors set forth in

Table S-4, 10 CFR Part 51. The values set forth in this detailed analysis represent the contribution of the environmental effects of transportation of fuel enriched with uranium 235 above 4 weight percent and up to 5 weight percent, and irradiated to levels above 33 GWD/MT and up to 60 GWD/MT to the environmental costs of operating the reactors. As shown above, the environmental cost contributions of the stated increases in fuel enrichment and irradiation limits are either unchanged or may in fact be reduced from those summarized in Table S-4, as set out in 10 CFR 51.52(c).

Dated: July 7, 1988.

[FR Doc. 88-18175 Filed 8-10-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-341]

Detroit Edison Co., Wolverine Power Supply Cooperative, Inc.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-43, issued to the Detroit Edison Company (DECo) and the Wolverine Power Supply Cooperative, Incorporated (the licensees) for the operation of Fermi-2 located in Monroe County, Michigan.

Environmental Assessment

Identification of Proposed Action

The Proposed amendment would revise provisions in the Fermi-2 Technical Specifications (TSs) relating to the Standby Gas Treatment System (SGTS) Radiation Monitors and the Containment High Range Radiation Monitor.

The Need for the Proposed Action

The proposed changes to the TSs are required in order to remove the potential for an unmonitored release for fission products from the plant and to revise Action Statement 81 to make it consistent with NRC Generic Letter 83-36.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TSs. The proposed revision would require a minimum of two channels, instead of one, of the SGTS Radiation Monitors to be operable to ensure that appropriate compensatory actions are taken to preclude conditions which have

the potential for allowing unmonitored releases of noble gases. In addition, the proposed amendment would (1) revise the associated Action Statement 81 in Table 3.3.7.5-1 for the SGTS Radiation Monitors and Containment High Range Radiation Monitor to extend the time period before the licensees are required to submit a Special Report to the Commission (pursuant to 6.9.2 of the TSs) as recommended by NRC Generic Letter 83-36; and (2) make appropriate changes in the TS Bases for Accident Monitoring Instrumentation as a result of the changes. Therefore, the proposed changes do not increase the probability or consequences of any accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological impact and could result in the reduction of the radiological impacts.

With regard to potential nonradiological impacts, the proposed changes to the TSs involve systems located within the restricted area as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 10, 1988 (53 FR 7819). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Because the Commission has concluded that there is no significant environmental impact associated with the proposed amendment, any alternative would have either no or greater environmental impact. The principal alternative would be to deny the requested amendment. This may increase the environmental impacts attributed to the facility due to allowing the potential for unmonitored releases from the facility.

Alternative Use of Resources

This action involves no use of resources not previously considered in connection with the "Final Environmental Statement Related to

Operation of Fermi-2," dated August 1981.

Agencies and Persons Consulted

The Commission's staff reviewed the licensees' request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with aspect to this action, see the application for amendment dated November 30, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 5th day of August 1988.

For the Nuclear Regulatory Commission,
Martin J. Virgilio,
Director, Project Directorate III-1, Division of
Reactor Projects-III, IV, V and Special
Projects.

[FR Doc. 88-18176 Filed 8-10-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-461]

Illinois Power Co., et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to the Illinois Power Company¹ (IP), Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc., (the licensees) for Clinton Power Station, Unit 1, located in DeWitt County, Illinois.

Environmental Assessment

Identification of Proposed Action

In general, the proposed license amendment would revise Technical Specification (TS) Section 4.8.2.1.d.2.b in order to accurately reflect the 4-hour Division II battery emergency loading profile. The licensees proposed to

increase the emergency loading profile of the Division II battery by 10 amperes. This increases the first, second, and third periods of the battery emergency loading profile to 462 amperes, 296 amperes, and 108 amperes, respectively.

This revision to the Clinton Power Station license would be made in response to the licensees' application for amendment dated October 30, 1987.

The Need for the Proposed Action

Pursuant to 10 CFR 50.90, IP, et al. have proposed an amendment to Facility Operating License No. NPF-62 in order to accurately reflect the 4-hour Division II battery emergency loading profile.

The purpose of this profile is to define the level of loading in amperes that the battery would have to supply for a specific time period during an emergency condition with the battery charger inoperable. The Technical Specification requires a demonstration once every 18 months during shutdown that the battery can supply a dummy load of that profile or that it can supply the actual emergency loads.

A review conducted by the licensees determined that a Division II load (Fire Protection distribution panel) was not considered for this profile during a previous plant modification review. The proposed Technical Specification change therefore increases the emergency loading profile of the Division II battery by 10 amperes. This increases the first, second, and third periods of battery emergency loading profile to 462 amperes, 296 amperes, and 108 amperes, respectively.

Environmental Impacts of the Proposed Action

The licensees stated that the battery capacity has been evaluated using the new loading profile to ensure its capability of supporting required design basis accident loads. The staff has determined that the change in battery load is not significant in comparison to the battery capacity and that the batteries are capable of supplying the new loads now and at the end of their twenty year life per IEEE 485.

Based on the relatively small increase in battery loading and the battery's capability of supplying the new loads, the staff concludes that the Division II battery will continue to provide its original 4-hour endurance under the new emergency loading profile.

The Commission has determined that potential radiological releases during normal operations, transients, and for accidents would not be increased. With regard to non-radiological impacts, and for proposed amendment involves systems located entirely within the

restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the staff also concludes that there are no significant non-radiological environment impacts associated with the proposed amendment.

Accordingly, the Commission findings in the "Final Environmental Statement related to the operation of Clinton Power Station, Unit No. 1" dated May 1982 regarding radiological environmental impacts from the plant during normal operation or after accident conditions, are not adversely altered by this action. IP is committed to operate Clinton, Unit 1 in accordance with standards and regulations to maintain occupational exposure levels "as low as reasonably achievable".

Alternative to the Proposed Actions

The principal alternative would be to deny the requested amendment. This alternative, in effect, would be the same as a "no action" alternative. Since the Commission has concluded that no adverse environmental effects are associated with this proposed action, any alternatives with equal or greater environmental impact need not be evaluated.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement dated May 1982 related to this facility.

Agencies and Persons Consulted

The NRC staff reviewed the licensees' request of October 30, 1987 and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon this Environmental Assessment, the Commission concludes that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the request for amendment dated October 30, 1987 and the Final Environmental Statement for the Clinton Power Station dated May 1982, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555 and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

¹ Illinois Power Company is authorized to act as agent for Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

Dated at Rockville, Maryland, this 4th day of August 1988.

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Acting Director, Project Directorate III-2,
Division of Reactor Projects III, IV, V and
Special Projects.

[FR Doc. 88-18177 Filed 8-10-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-271]

Vermont Yankee Nuclear Power Corp.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 105 to Facility Operating License No. DPR-28 issued to Vermont Yankee Nuclear Power Corporation (the licensee), which revised the Technical Specifications for operation of the Vermont Yankee Nuclear Power Station located in Vernon, Vermont. The amendment was effective as of the date of issuance.

The amendment revised the Technical Specifications to reflect new limiting conditions of operation and surveillance requirements for the automatic depressurization system in response to NUREG-0737, Item I.K.3.18.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which is set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on March 3, 1988 (53 FR 6889). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact related to the action and has concluded that an environmental impact statement is not warranted and that the issuance of this amendment will not have a significant adverse effect on the quality of the human environment.

For further details with respect to the action, see (1) the application for amendment dated November 30, 1987 and clarifying information dated January 20, 1988 and April 13, 1988, (2) Amendment No. 105 to License No. DPR-28, and (3) the Commission's related Safety Evaluation and Environmental Assessment.

All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Brooks Memorial Library, 244 Main Street, Brattleboro, Vermont 05301. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland, this August 4, 1988.

For the Nuclear Regulatory Commission.

Vernon L. Rooney,

Project Manager, Project Directorate I-3,
Division of Reactor Projects, I/II.

[FR Doc. 88-18178 Filed 8-10-88; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

Powder Springs, TN 37848, Boyd Kitts, et al., Petitioners; Order Accepting Appeal and Establishing Procedural Schedule

[Order No. 793; Docket No. A88-4]

Before Commissioners: Janet D. Steiger, Chairman; Patti Birge Tyson, Vice-Chairman; John W. Crutcher; Henry R. Folsom; W.H. "Trey" LeBlanc, III.

Issued August 4, 1988.

Docket Number: A88-4.

Name of Affected Post Office: Powder Springs, Tennessee 37848.

Name(s) of Petitioner(s): Boyd Kitts and others.

Type of Determination: Consolidation.

Date of Filing of Appeal Papers: July 29, 1988.

Categories of Issues Apparently Raised:

1. Effect on the community [39 U.S.C. 404(b)(2)(A)].
2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
3. Economic savings [39 U.S.C. 404(b)(2)(D)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before August 15, 1988.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Charles L. Clapp,

Secretary.

Appendix—Powder Springs, Tennessee 37848, Docket No. A88-4

July 29, 1988—Filing of Petition
August 4, 1988—Notice and Order of Filing of Appeal

August 23, 1988—Last day for filing petitions to intervene [see 39 CFR 3001.111(b)]

September 2, 1988—Petitioners' Participant Statement or Initial Brief [see 39 CFR 3001.115 (a) and (b)]

September 22, 1988—Postal Service Answering Brief [see 39 CFR 3001.115(c)]

October 7, 1988—(1) Petitioners' Reply Brief should Petitioners choose to file one [see 39 CFR 3001.115(d)]

October 14, 1988—(2) Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116]

November 26, 1988—Expiration of 120-day decisional schedule [see 39 U.S.C. 404(b)(5)]

[FR Doc. 88-18143 Filed 8-10-88; 8:45 am]

BILLING CODE 7715-01-M

RAILROAD RETIREMENT BOARD

Computer Matching Program; USDA Food Stamp Program Recipient Records-RRB Retirement and Survivor Benefit Records

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: The Railroad Retirement Board (RRB) hereby gives notice that it is proposing to conduct a matching program with the United States Department of Agriculture—OIG (USDA—OIG). The match will compare the USDA—OIG Food Stamp Program recipient files with the RRB's master file of retirement and survivor beneficiaries. The purpose of the match is to provide the USDA—OIG with railroad retirement and survivor benefit data for persons who are in receipt of both USDA—OIG Food Stamp Program benefits and railroad retirement or survivor benefits. The goals of the matching program are to adjust the award of USDA—OIG benefits if RRB benefits were not reported or were incorrectly or

incompletely reported and to recoup the amount of any overpayments resulting from payment of USDA-OIG benefits in excess of entitlement.

As prescribed by the OMB Revised Guidelines for the Conduct of Matching Programs, published at 47 FR 21656-58 (May 19, 1982), the text of the matching program report follows. In accordance with these guidelines, copies of this report have been sent to OMB, the Speaker of the House, and the President of the Senate.

FOR FURTHER INFORMATION CONTACT: LeRoy Blommaert, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611. Telephone (312) 751-4548.

Dated: July 26, 1988.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

Report of Matching Program: Food Stamp Program Recipient Records/ Railroad Retirement Board Retirement and Survivor Benefit Records

A. Authority

38 U.S.C. 3006.

B. Description of the Matching Program

1. *Organizations Involved:* The involved components are the Railroad Retirement Board (RRB) and the Department of Agriculture—Office of Inspector General (USDA-OIG).

2. *Purpose:* Food Stamp Program (FSP) benefits are payable at a rate prescribed by law but subject to reduction by the amount of monthly income of the recipient. Benefits paid under the Railroad Retirement Act are considered as income for the purposes of reducing the amount of these FSP benefits. The purpose of the matching program is to identify FSP recipients who are also receiving railroad retirement or survivor benefits and to furnish, for such dual beneficiaries, the amount of the RRB retirement or survivor benefits that they are receiving. The goals of the matching program are to adjust the award of FSP benefits if RRB benefits were not reported or were incorrectly or incompletely reported and to recoup the amount of any overpayments resulting from payment of FSP benefits in excess of entitlement.

3. *Procedures:* The USDA-OIG will furnish the RRB with an extract file from the FSP files. An extract record will be prepared for each person who is receiving FSP benefits. The extract file will be sorted into social security number (SSN) sequence and mailed to the RRB.

The RRB will match USDA-OIG's extract file against its research records of retirement and survivor benefits. The

match will be on SSN solely. For each hit, the RRB will furnish USDA-OIG with the total amount of RRB monthly benefits paid. In the event an individual is receiving benefits on more than one RRB account, the amount will be combined into a single amount for transmittal to USDA-OIG. The RRB amount to be transmitted will be the amount paid after all permanent reductions have been made (e.g., age, SSA benefit, actuarial adjustment) but before any temporary deductions have been made (e.g., partial withholding for excess earnings, withholding for income tax, SMI premiums). The RRB benefit amount on hits will be entered in the USDA-OIG extract tape, which will be returned to the USDA-OIG.

The USDA-OIG will process RRB data as follows: (a) For FSP recipients on whom receipt of RRB benefits is already a matter of record with the FSP, and FSP will enter the amount of RRB benefits on its records to reflect the amount of such benefits which the RRB has furnished; however, for each FSP beneficiary whose verified RRB benefit amount differs from that on FSP records, the FSP will advise its beneficiary of the amount of RRB payments reported to the FSP by the RRB and of any proposed award adjustment before adjusting any FSP benefit. If a FSP recipient disputes the amount or effective date of RRB benefits, the FSP shall contact the RRB for verification. The FSP will provide the beneficiary with the exact amount of RRB benefits furnished so that the beneficiary can dispute any discrepancy; and (b) For FSP recipients on whom receipt of RRB benefits is not already a matter of record with the FSP, the FSP shall contact the RRB for verification. With respect to any award action which the FSP intends to take regarding any beneficiary covered by the procedures outlined above, the FSP shall comply with due process provisions of applicable law prior to making any adjustments in FSP benefits based on information furnished by the RRB.

C. Records To Be Matched

RRB will match its research retirement and survivor master files with the USDA-OIG extract file of FSP recipients. The RRB research retirement and survivor master files are covered by Privacy Act systems of records RRB-25 and RRB-26, which were last published in their entirety at 42 FR 4783-84 dated September 20, 1977. The USDA-OIG's FSP files are covered by Privacy Act system of records Audit Information System USDA-OIG-6, which was last published in its entirety at 50 FR 50814-50819 dated December 12, 1985.

D. Period of the Match

It is expected that the first match will take place at the earliest mutually agreeable time. Subsequent matches will take place after each scheduled legislative increase in RRB benefits. Such increases are anticipated to occur on an annual basis. Thus the matching program is expected to be an annual one; however, legislative changes could result in less or more frequent matches.

E. Security Safeguards

The RRB will maintain such administrative, technical, and physical security safeguards for the USDA-OIG file while in the possession of the RRB as it does for its own files. Records are maintained in areas not accessible to the public and are not permitted to be removed from headquarters without authorization. All magnetic tapes not in use or not in security storage are housed in a tape library room that is locked during off-duty hours and to which access is restricted. Access to the computer room is also restricted and is locked during off-duty hours. These same safeguards will apply to the USDA-OIG extract file while it is in the possession of the RRB.

The USDA-OIG security safeguards for RRB information on "hit individuals" furnished to the USDA-OIG shall be the same as for other personal information in this system of records.

F. Disposition of Records

The USDA-OIG extract tape will be returned to the USDA-OIG within 30 days after each match is completed. Information extracted from RRB files regarding "hits" will be incorporated into USDA-OIG Privacy Act system of records and will be disposed of according to established record retention schedules for such records.

G. Other Comments

1. *Background of the Match:* Previous audits of the FSP have determined that some recipients do not fully report their sources and amounts of income to the FSP. As a result, those recipients receive FSP benefits to which they are not entitled. The USDA-OIG initiated this computer match to determine if FSP recipients who are also in receipt of RRB benefits are correctly reporting their FSP benefits.

2. *Routing Uses:* The RRB will publish in the *Federal Register* a proposed routine use for its Privacy Act systems of records RRB-25 and RRB-26 that will permit disclosure of benefit information from these systems to the USDA-OIG. Likewise, the USDA-OIG will publish in the *Federal Register* a proposed routine

use for its Privacy Act system of records Audit Information System, USDA-OIG-6, that will permit disclosure of identifying information from this system to the RRB. The proposed match will not begin until the Privacy Act requirements governing routine uses have been met: namely, that the public be given 30 days in which to comment on the proposed routine use before it is effective, and, if comments are received, that the agency take them into consideration before making any disclosures pursuant to the routine uses.

3. *RRB Use Of USDA-OIG's Extract File:* The RRB will use the USDA-OIG extract file only to match with the RRB files agreed to; it will not use the USDA-OIG file to extract information concerning "non-hit" individuals for any purpose; and it will not duplicate the file, produce hard copy from it, or disseminate it within or outside the agency unless specifically authorized in each instance by the USDA-OIG.

[FR Doc. 88-17451 Filed 8-10-88; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25966; File No. SR-MSE-88-3]

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Order Approving Amendments to Rules Authorizing Odd-Lot Differentials

Pursuant to section 19(b)(1) ¹ of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, ² the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") submitted on April 4, 1988 proposed amendments to its rules governing price differentials on odd-lot trades. The proposal also details the changed pricing and execution procedures of various odd-lot orders.

Notice of the proposed amendments to odd-lot executions was provided by the issuance of a Commission release (Securities Exchange Act Release No. 25633; May 2, 1988) and by publication in the *Federal Register* (53 FR 16448; May 9, 1988). No comments were received with respect to the proposed amendments.

The proposal removes the authority of the Exchange's Committee on Floor Procedure to designate an odd-lot differential, ³ thereby eliminating the

differential previously imposed on customer odd-lot orders. Amended MSE Rule 1 of Article XXXI would no longer authorize the designation of an odd-lot differential by the Committee on Floor Procedure, and, accordingly, MSE Rule 7 of Article XXXI, which has allowed odd-lot dealers to charge a differential, is withdrawn under the proposal.

The proposal also explains the changed pricing procedures of a variety of odd-lot orders, all of which eliminate the odd-lot differential. ⁴ Odd-lot market orders in MSE exclusive issues will be executed at the best available bid or ask price of a round lot in effect at the time the order is presented. With respect to certain designated MSE dually traded issues: (i) Odd-lot market orders will be executed at the best available quotation disseminated pursuant to Commission Rule 11Ac1-1, the "Quote Rule"; ⁵ (ii) the odd-lot portion of an order involving a round lot will be based on the round lot, regardless of where the round lot is executed; and (iii) in trading halt situations, odd-lot market orders will be executed based on the primary exchange market's reopening price.

More generally, an odd-lot market will be executed at the current round lot bid or ask price. Stop orders to buy (sell) will become market orders when a round lot transaction takes place at or above (below) the stop price, and the order must be filled at the price of the next transaction. Buy limit orders (or long sell limit orders) shall be executed at the limit price, only after there has been a round lot transaction in the primary market at a price below (above) the limit price. Again, none of these odd-lot orders will be charged a differential under the proposal.

The Commission believes that the proposal is consistent with the Act, and the rules and regulations thereunder applicable to a national securities exchange, and, more specifically, sections 6(b)(5) and 11a(a)(1)(C)(i) of the Act, in that the amendments will facilitate transactions in securities, add to the maintenance of a free and open market, and provide for more economically efficient executions of securities transactions. The Commission finds that the proposed amendments to

stock quoted at 20 by 20% the execution would occur at 20% (the 20%, sell quote plus the % differential), if the market traditionally charged a differential on such orders.

⁴ The Commission recently approved a similar rule change proposed by the Philadelphia Stock Exchange ("Phlx"). Although the Phlx rule change is substantially similar to the MSE proposal, the Phlx retained the authority to charge a differential on odd-lot stop limit orders. See Securities Exchange Act Release No. 25665 (May 5, 1988), 53 FR 16628 (May 11, 1988).

⁵ 17 CFR 240.11Ac1-1.

MSE Rules 1 and 10 of Article XXXI, and the withdrawal of MSE Rule 7 of Article XXXI, will simplify the pricing and execution of odd-lot orders, and that the elimination of the differential on all such transactions will result in the execution of customer orders at prices more representative of market interests, and with lower transaction costs.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above mentioned rule change is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. ⁶

Jonathan G. Katz,
Secretary.

Dated: August 4, 1988.

[FR Doc. 88-18152 Filed 8-10-88; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Application To Withdraw From Listing and Registration; Scientific Leasing, Inc. 8 1/4% Convertible Subordinated Debentures, Due 2003, File No. 1-8433

August 5, 1988.

Scientific Leasing Inc. ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

As a result of a merger with LINC Acquisition Corp. all of the Company's equity securities are beneficially owned by The LINC Group, Inc. In addition, the debentures are no longer convertible into common stock but rather into cash only. In view of the fact that there are only 188 record holders of the debentures, trading activity is not substantial and the rights of the debenture holders to convert to common stock has been terminated the Company has determined that the direct and indirect costs and expenses of continued listing on the Amex are no longer justified and delisting is in the best interest of the Company's stockholders.

Any interested person may, on or before August 26, 1988, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts

⁶ See 17 CFR 200.30-3(a)(44).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The differential is the charge, usually 1/4 of a point, that dealers add to odd-lot purchases and subtract from odd-lot sales. For example, if a customer placed an odd-lot market order to buy a

bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-18154 Filed 8-10-88; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Application To Withdraw From Listing and Registration; Warner Computer Systems, Inc. (Common Stock, \$.01 Par Value), File No. 1-9228

August 5, 1988.

Warner Computer Systems, Inc. ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange ("Annex"). The Company's common stock was recently listed and registered on the New York Stock Exchange, Inc. ("NYSE").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the Amex. The Company does not see any particular advantage in the dual trading of its common stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before August 26, 1988, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application

after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-18153 Filed 8-10-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16516; 812-7014]

The RBB Fund, Inc.; Application

August 5, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: The RBB Fund, Inc. ("Fund") and Planco Financial Services, Inc.

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from Sections 18(f)(1), 18(g) and 18(i).

Summary of Application: Applicants seek an order to permit the issuance and sale of separate classes of shares representing interests in the same investment portfolio that would be identical in all respects except for class designation and the allocation of certain expenses and voting rights.

Filing Date: The application was filed on April 7, 1988, and an amendment thereto was filed on July 12, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on August 26, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, Attn: Edward J. Roach, Treasurer, 103 Springer Building, 3411 Silverside Road, Wilmington, Delaware 19803.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel at

(202) 272-3030 (Division of Investment Management).

SUPPLEMENTARY INFORMATION:

Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Fund is registered under the 1940 Act as an open-end diversified management investment company. Pursuant to its Articles of Incorporation, the Fund has classified its shares of common stock (the "Shares") into fourteen separate classes ("Classes") representing interests in seven investment portfolios ("Portfolios"). The Fund has filed with the Commission a Registration Statement on Form N-1A, as amended, relating to such Classes.

2. Two Classes of Shares of the Fund (the "Cash Preservation Classes") are currently expected to be offered principally to persons who are recipients of insurance policy payments, with one Class representing interests in a money market investment portfolio (the "Money Portfolio") and the second Class representing interests in a tax-free money market portfolio (the "Tax-Free Money Portfolio"). Three Classes of Shares (the "Sansom Street Classes") will be offered to banks (the "Banks") affiliated with PNC Financial Corp on behalf of customers who have authorized investment in the Fund ("Customers"), with one Class representing interests in the Money Portfolio, a second Class representing interests in the Tax-Free Money Portfolio and a third Class representing interests in a Government Obligations Money Market Portfolio (the "Government Obligations Portfolio"). Three Classes of Shares (the "Bedford Classes") will be offered primarily to registered broker/dealers on behalf of their customers, generally as a sweep vehicle for cash balances in customers' brokerage accounts, but may also be purchased directly by investors, with one Class representing interests in the Money Portfolio, a second Class representing interests in the Tax-Free Money Portfolio and a third Class representing interests in the Government Obligations Portfolio. Six additional Classes of the Fund's Shares (the "Safeguard Classes") will be sold primarily to individuals by broker/dealers, with each Class representing interests in a different investment portfolio, four of which represent interests in non-money market

investment portfolios and are to be sold with a sales load, and the remaining two of which represent interests in the Money Portfolio and the Tax-Free Money Portfolio. Applicant's Money Portfolio, Tax-Free Money Portfolio and Government Obligations Portfolio, together with any other Portfolios of the Fund that in the future declares dividends on a daily basis are sometimes referred to as the "Daily Dividend Portfolios".

3. Planco Financial Services, Inc. (the "Distributor") will serve as distributor of the Fund's Shares. Provident Institutional Management Corporation and Provident National Bank ("Provident") serve respectively as the Fund's investment adviser and sub-advisor. Provident and Provident Financial Processing Corporation serve respectively as the Fund's custodian and transfer agent.

4. The Fund has created multiple Classes in a Daily Dividend Portfolio to permit Applicants to market the Fund's Shares to various categories of investors, when all such investors share a common investment goal (compatible with the investment objective and policies of a Daily Dividend Portfolio) but when such investors may best be reached by the Fund through differing marketing channels which involve different levels of expenditures.

5. Except for its class designation and the allocation of certain expenses and voting rights as described below, each Class of Shares in a Daily Dividend Portfolio will be identical in all respects to all other Classes in the same Daily Dividend Portfolio. They differ, however, in that each Class of Shares will be offered in connection with a different Rule 12b-1 Plan adopted by the Fund pursuant to Rule 12b-1 under the Act (the "Plans"). The adoption and implementation of a Plan by one Class will be made independently of, and will not be conditioned upon, the adoption or implementation of a Plan by any other Class. In addition, each Plan will relate only to the Shares of a particular Class.

6. The Sansom Street Classes of a Daily Dividend Portfolio will differ from other Classes in such Portfolio in that the Shares of such Class will be offered in connection with a Shareholder Services Plan (a "Services Plan"). Under each Services Plan, the Fund intends to enter into shareholder servicing agreements ("Servicing Agreements") with the Banks concerning the provision of support services to the Customers. The provision of support services under a Services Plan will augment (and not duplicate) the services that will be provided to a Sansom Street Class by the Fund's adviser, distributor,

custodian and transfer agent. Fees paid under Servicing Agreements ("Service Payments") will be borne solely by the Class to which such Servicing Agreements relate.

7. Each Share in a particular Daily Dividend Portfolio, regardless of Class, will represent an equal pro rata interest in the Daily Dividend Portfolio and will have identical voting, dividend, liquidation and other rights, preferences, powers, restrictions, limitations, qualifications, designations and terms and conditions, except that: (1) Each Class will have different class designations; (2) each Class of shares will bear the Expenses of Applicant's operations which are directly attributable to such Class; and (3) only the holders of the Shares of a Class involved will be entitled to vote on matters pertaining to a Plan of that Class (for example, the adoption, amendment or termination of a Plan) or any other matter affecting only that Class.

8. The net asset value of all outstanding Shares representing interests in the same Daily Dividend Portfolio will be computed on the same days and at the same times and in the same manner. Further, the gross income of a Daily Dividend Portfolio will be allocated on a pro rata basis to each outstanding Share in a Daily Dividend Portfolio regardless of Class.

9. Expenses incurred by the Fund, for example, fees of directors, auditors and legal counsel, not attributable to a Portfolio or a Class, will be charged to the Fund and allocated to the Portfolios on the basis of their relative net assets. Expenses incurred by a Portfolio, such as the fees of an adviser, will be charged to the Portfolio. Expenses incurred by and attributable to a Class, such as payments to the Distributor pursuant to a Plan adopted by the Fund with respect to a Class, payments under Service Plans, transfer agency expenses (which are a function of the type of account and the services provided to an account) and certain other expenses (collectively, "Class Expenses") will be charged to that Class.

10. Because of the Class Expenses that will be borne by a Class of Shares, the net income of (and dividends payable to) any one Class of a Daily Dividend Portfolio may be different than the net income of another Class of Shares of the same Daily Dividend Portfolio that has different Class Expenses. Dividends paid to each Class of Shares in a Daily Dividend Portfolio will, however, be declared on the same days and at the same times and will be paid monthly,

and will be determined in the same manner and paid in the same amounts.

Applicants' Legal Analysis

1. Applicants request an exemptive order pursuant to section 6(c) of the 1940 Act to the extent that the proposed issuance and sale of existing and future Classes of Shares representing interests in the Fund's existing and future Daily Dividend Portfolios, including dividends thereon as described above, might be deemed: (1) To result in a "senior security" within the meaning of section 18(g) of the 1940 Act and to be prohibited by section 18(f)(1) of the 1940 Act; and (2) to violate the requirement in section 18(i) of the 1940 Act that every share of stock issued by a registered investment company shall have equal voting rights with every other outstanding voting stock.

2. The Fund's Board of Directors believes that by creating and offering Shares of different Classes as described above, the Fund may be able to achieve added flexibility in meeting the service and investment needs of shareholders and future investors. The Fund's Board of Directors believes further that it would be appropriate for the expenses of a Plan with respect to a Class of Shares to be borne exclusively by that Class, and for the expense of a Services Plan with respect to a Class of Shares to be borne exclusively by that Class, but anticipate that it would be inefficient, and in some instances economically or operationally unfeasible, to organize a separate investment portfolio for each Class of Shares.

3. Applicants assert that the proposed allocation of expenses and voting rights relating to the Plans and relating to other Class Expenses in the manner described will not adversely affect the interests of any shareholders.

4. Applicants assert further that, if the concept of using fund assets embodied in Rule 12b-1 is now joined to the concept of classes within an investment portfolio, it will be possible for a fund to establish different marketing efforts targeting different investor groups with a variety of techniques, in each instance tailoring the level of use of fund assets to no more than that necessary to meet the specific marketing costs of the specific target class. Using different 12b-1 plans for classes in an investment portfolio targeting dissimilar classes of investors would recognize the particular costs attendant on marketing to such varied classes of investors.

5. The Board of Directors will adopt for each Class a separate Plan. Each Plan will be subject to the separate approval of the specific Class using that Plan. Each such Plan will be funded

solely from the assets of the specific Class. In particular, this funding would be structured so that the Plan expenses of a Class could draw only upon the income available to Shares of that Class, thus assuring that no assets of any other Class will be used to enhance distribution of Shares of the Class. This will assure that no Plan will be operated in such a manner as to cause payments under the Plan to subsidize the distribution of the Shares of any other Class of the same daily Dividend Portfolio. (This limitation also assures that the net asset value per share of each Share in the Daily Dividend Portfolio will remain the same as that of every other Share, regardless of Class). A quarterly review of each Plan's expenses for each Daily Dividend Portfolio will be maintained, and will be reviewed by the Board of the Fund. In determining whether to approve or extend any Plan, the Board (including the members of the Board who are not interested persons under Rule 12b-1) will consider certain specific factors set forth in the application.

6. The Board of Directors will also adopt for each of the Sansom Street Classes a separate Services Plan, as referred to above. The expenses of such Services Plan will be paid only from the income available to the Shares of the Class covered by such Services Plan. This will assure that no Services Plan will be operated in such a manner as to cause Service Payments to subsidize the operations of another Class, and will also assure that the net asset value of each Share in a Daily Dividend Portfolio will remain the same, regardless of Class. The expenses of each such Services Plan will be reviewed quarterly by the Fund's Board of Directors. In determining whether to approve or extend any Services Plan, the Board of Directors (including the members of the Board of Directors who are not interested persons of the Fund) will consider the specific factors set forth in the application with respect to approving or continuing a Plan for the specific Class covered by a Services Plan.

7. Accordingly, Applicants submit that the requested exemption is appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicants' Conditions

If the requested order is granted Applicants expressly consent to be subject to the following conditions:

1. The only difference between each Class of Shares representing interests in the same Daily Dividend Portfolio will

relate solely to priorities with respect to: (a) The payment of dividends, and such priority will reflect only the impact of Class Expenses; and (b) voting rights on matters which pertain to Plans and any other matters affecting only that particular Class. In addition, the designation of each Class of Shares in a Daily Dividend Portfolio would be different.

2. The Plan relating to each Class of Shares will be approved and reviewed by the Fund's Board of Directors in accordance with the procedures set forth in Rule 12b-1 (both currently and as that Rule may be modified in the future) and, in addition, will be approved by those shareholders of the Class which are affected in accordance with the Rule. Each Services Plan relating to a Class of Shares will be approved and reviewed by the Fund's Board of Directors in accordance with the procedures set forth in Rule 12b-1 (both currently and as that Rule may be modified in the future). In addition, the Fund's Board of Directors, in approving and reviewing payments to a Bank pursuant to any Services Plan, will conclude in good faith based on information available to it that such expenditures are competitive with those offered in the industry.

3. Dividends paid by the Fund with respect to each Class of Shares in a Daily Dividend Portfolio will be calculated in the same manner, at the same times, and on the same days and will be in the same amount as dividends paid by the Fund with respect to each other Class of Shares in the same Daily Dividend Portfolio, except that Class Expenses of a Class in a Daily Dividend Portfolio will be borne exclusively by that Class.

4. Each prospectus relating to a Class of Shares that is offered in connection with a Services Plan will: (a) Describe all services rendered by Banks under Servicing Agreements with respect to such Shares and the fees payable by the Fund for such services; and (b) state that the beneficial owners of such Shares should read the prospectus in light of the terms governing their accounts.

5. Each Servicing Agreement entered into by Applicant will contain representations by the Bank involved that: (a) The Bank will provide to its Customers a schedule of any fees charged by it to the Customers relating to the investment of their assets in the Class of Shares subject to the Servicing Agreement; (b) the Bank will retain Service Payments only if a Customer has authorized investment in the Fund; and (c) the compensation paid to the Bank under the Servicing Agreement will not be excessive or unreasonable.

6. The Fund will operate a Daily Dividend Portfolio issuing Shares of more than one Class only when and for so long as such Portfolio declares a daily dividend, accrues all Class Expenses daily, and has received an undertaking from the Distributor and each Bank waiving such portion of its compensation under a Plan or Services Plan to the extent necessary to assure that the 12b-1 payment or Services Payment required to be accrued by any Class of Shares on any day does not exceed the income to be accrued to such Class of Shares on that day. In this manner the net asset value per Share for all Shares of a Daily Dividend Portfolio will remain the same.

7. Applicants acknowledge that the grant of the requested exemptive order does not imply Commission approval, authorization or acquiescence in any particular level of Class Expenses in reliance on the exemptive order.

8. If the requested order is granted, the Fund will comply with the provisions of any Rules adopted under section 18 of the 1940 Act, and will comply with all positions of the Division of Investment Management and the Commission with respect to the offering of dual classes of shares by mutual funds set forth in Commission releases, including accounting rules and notices issued with respect to exemptive applications involving dual distribution arrangements comparable to that set forth in the Fund's application which would have a material effect on the Fund's arrangement, and the Fund will immediately take the steps necessary to comply, to the extent applicable.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-18206 Filed 8-10-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination; Havasu Airlines

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—Order 88-8-23, order to show cause, Docket 45551.

SUMMARY: The Department of Transportation is proposing to find that Intercity Airlines, Inc. d/b/a Havasu Airlines continues to be fit, willing, and able to engage in commuter air service

under section 419(c)(2) of the Federal Aviation Act for a period of 180 days.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses in Docket 45551, Documentary Services Division, Room 4107, Department of Transportation, 400 7th Street SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than August 15, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara P. Dunnigan, Air Carrier Fitness Division, Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366-2342.

Dated: August 8, 1988.

Matthew V. Scocozza,
Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-18203 Filed 8-10-88; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Proposed Advisory Circular 20-XX; Protection of Aircraft Electrical/ Electronic Systems Against the Indirect Effects of Lightning

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of Proposed Advisory Circular 20-XX, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) pertaining to protection of aircraft electrical/electronic systems against the indirect effects of lightning. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATE: Comments must be received on or before December 9, 1988.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Transport Standards Staff, ANM-110, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, Transport Standards Staff, at the above address, telephone (206) 431-2127.

SUPPLEMENTARY INFORMATION: Comments Invited

A copy of the draft AC may be obtained by contracting the person named above under "FOR FURTHER INFORMATION CONTACT." Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments, as they may desire. Commenters should identify AC 20-xx and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

Background

Concern for the vulnerability of aircraft flight critical and essential systems to atmospheric electricity hazards has increased substantially. Aircraft are currently being and will continue to be certified utilizing an increasing number of electrical and electronic systems. Two primary factors that have contributed to this increased concern are:

1. Increasingly widespread use of sensitive electronics to perform flight critical and essential functions, and
2. The reduced electromagnetic shielding afforded aircraft systems by advanced technology airframe materials.

Atmospheric electricity interaction with an aircraft can result in numerous problems. For the case of lightning, physical damage (direct effects) can result from a lightning attachment to the aircraft. Additional effects may result when the fast changing electromagnetic fields produced by a direct strike couple voltage and current transients into the electrical and electronic equipment or components. These transients can be produced by electromagnetic field penetration into the aircraft interior or by structural IR (current times resistance) voltage rises due to current flow on the aircraft, and are referred to as direct effects.

The trend toward increased reliance on electrical and electronic systems for flight and engine control functions, navigation, and instrumentation requires that effective lightning protection measures be designed and incorporated into these systems. Reliance upon redundancy as a sole means of protection against lightning effects is generally not adequate because the electromagnetic fields and structural IR voltages can interact concurrently with all electrical wiring aboard an aircraft.

Issued in Seattle, Washington, on July 1, 1988.

Leroy A. Keith,
*Manager, Aircraft Certification Division,
ANM-100.*

[FR Doc. 88-18126 Filed 8-10-88; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map Notice, Pal- Waukee Municipal Airport, Wheeling/ Prospect Heights, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Pal-Waukee Municipal Airport Commission (operator), and the city of Prospect Heights and Village of Wheeling (co-owners), for Pal-Waukee Municipal Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is July 26, 1988.

FOR FURTHER INFORMATION CONTACT: Prescott C. Snyder, Federal Aviation Administration, Great Lakes Region, Airports Division, AGL-611, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694-7538.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Pal-Waukee Municipal Airport are in compliance with applicable requirements of Part 150, effective July 26, 1988.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may

submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related description submitted by the Pal-Waukee Airport Commission (operator), and the City of Prospect Heights and Village of Wheeling (co-owners). The specific maps under consideration are the noise exposure maps: 1987 unabated conditions and 1992 unabated conditions in the submission. The FAA has determined that these maps for Pal-Waukee Municipal Airport are in compliance with applicable requirements. This determination is effective on May 20, 1988. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps.

Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

- Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591
- Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, Room 261, Des Plaines, Illinois 60018
- Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 260, Des Plaines, Illinois 60018
- Pal-Waukee Municipal Airport Commission, Pal-Waukee Airport, Wheeling, Illinois 60090
- Village of Wheeling, 255 West Dundee Road, Wheeling, Illinois 60090
- City of Prospect Heights, 4 East Camp McDonald Road, Prospect Heights, Illinois 60070

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Des Plaines, Illinois, on July 26, 1988.

Stanley Rivers,

Acting Regional Administrator, Great Lakes Region.

[FR Doc. 88-18125 Filed 8-10-88; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Anne Arundel and Prince George's Counties, MD

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplemental environmental impact statement is being prepared for the proposed widening of MD Route 3 in Anne Arundel and Prince George's Counties, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. Herman Rodrigo, Planning, Research, Environment and Safety Engineer, Federal Highway Administration, The Rotunda, Suite 220, 711 W. 40th Street, Baltimore, Maryland 21211 telephone 301/962-4132, and/or Mr. Louis Ege, Jr., Deputy Director, Project Development Division, Maryland State Highway Administration, 707 North Calvert Street, Room 310, Baltimore, Maryland 21202, telephone 301/333-1130.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the

Maryland State Highway Administration, is preparing a supplemental environmental impact statement to develop an acceptable alternate to widen approximately an eight-mile portion of existing Maryland Route 3 from the Maryland Route 32/I-97 interchange to US. 50/301 (I-68).

The project was formerly studied as proposed I-297, and a final environmental impact statement EIS (FHWA-MD-EIS-81-02-F) was approved in July 1983. (This section of MD Route 3 will not be designated as part of the Interstate system.) Current and proposed future development within the corridor has changed substantially since the final EIS approval. This development has resulted in a considerable increase in projected design year traffic volumes. The supplemental EIS will address the substantial changes in the project scope necessary to satisfy the increased traffic projections, and the resultant changes in potential impacts.

Environmental concerns of primary importance are residential and business displacements, floodplain and wetland impacts, and impacts to parks and historic sites.

A public meeting to discuss the preliminary alternates will be held. Also, a public hearing will be held after circulation of the supplemental DEIS. A public notice will give the time and place of the public meeting and hearing, and individual notices will be sent to those agencies, groups, and individuals on the mailing list. The supplemental DEIS will be available for public and agency review and comment prior to the public hearing. To ensure that the full range of issues relating to this proposal are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

(Catalog of Federal Domestic Assistance Program Number 20.025, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this program.)

George K. Frick,

Acting Division Administrator, Baltimore, Maryland.

[FR Doc. 88-18144 Filed 8-10-88; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Mitchell County, NC

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Mitchell County, North Carolina.

FOR FURTHER INFORMATION CONTACT:

Kenneth L. Bellamy, Division Administrator, Federal Highway Administration, Suite 470, 4505 Falls of Neuse Road, P.O. Box 26806, Raleigh, North Carolina 27611, Telephone (919) 790-2852.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an environmental impact statement (EIS) on a proposed bypass of Spruce Pine in Mitchell County. The proposed action would be the construction of two-lane facility on four-lane right-of-way, on new location from US 19 to Mimpro. The proposed project is needed to alleviate traffic congestion in downtown Spruce Pine and to provide a safer truck route between US 19 and NC 226. It will shorten travel distance and time by providing an additional crossing of the North Toe River.

Alternatives under consideration include (1) the "no-build", (2) improving the existing facilities and (3) three corridors for construction of a bypass.

Letters describing the proposed action and soliciting comments are being sent to appropriate Federal, State and local agencies. A public meeting and meeting with local officials will be held in the study area. A public hearing will also be held. Information on the time and place of the public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment at the time of the hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The provisions of OMB circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program.)

Issued on: August 4, 1988.

J. M. Tate,

District Engineer, FHWA, Raleigh, North Carolina.

[FR Doc. 88-18145 Filed 8-10-88; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statements; Edgecombe-Pitt-Martin Counties, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that environmental impact statements will be prepared for two proposed highway projects in Edgecombe, Pitt, and Martin Counties, North Carolina.

FOR FURTHER INFORMATION CONTACT:

Mr. Kenneth L. Bellamy, Division Administrator, Federal Highway Administration, 4505 Falls of the Neuse Road, Suite 470, Raleigh, North Carolina 27609, Telephone (919) 790-2950.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare two environmental impact statements (EIS) for companion highway projects covering the proposed relocation of US 64 from Tarboro in Edgecombe County to east of Williamston in Martin County. The proposed action consists of the construction of an expressway on new location. One EIS will discuss the proposed relocation of US 64 from US 258 in Tarboro to near SR 1302 west of Robersonville, a distance of approximately 13 miles. The other EIS will discuss the proposed relocation of US 64 from near SR 1302 west of Robersonville to existing US 64 east of Williamston, a distance of approximately 15 miles. The proposed projects are needed to serve traffic demand in the area. They will provide a much needed alternative route for US 64 traffic and will relieve the congestion, delay, and inconvenience currently being experienced along this highway by removing through traffic from the existing facility. The proposed relocation of US 64 will bypass the towns of Tarboro, Princeville, and Conetoe in Edgecombe County, Bethel in Pitt County, and Parmele, Robersonville, Everetts, and Williamston in Martin County.

Alternatives under consideration include (1) the "no-build", (2) improving existing US 64, and (3) the construction of an expressway on new location.

Letters describing the proposed action and soliciting comments are being sent to appropriate Federal, State, and local agencies. Public meetings and meetings with local officials will be held in the project area. A corridor public hearing and a design public hearing will be held for each project. Information on the time and location of the public meetings and public hearings will be provided in the local news media. The draft EIS for each

project will be available for public and agency review and comment at the time of the corridor public hearing. No formal scoping meeting is planned at this time.

To insure that the full range of issues relating to the proposed action addressed and all significant issues identified, comments and suggestions are invited from all interested parties. The projects will be coordinated to insure that commenting parties and review agencies will be able to review and comment on the documents at the same time. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 28, 1988.

Roy C. Shelton,

District Engineer, FHWA Raleigh, North Carolina.

[FR Doc. 88-18170 Filed 8-10-88; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Mecklenburg County, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the City of Charlotte, North Carolina.

FOR FURTHER INFORMATION CONTACT:

Max Tate, District Engineer, Federal Highway Administration, 4505 Falls of Neuse Road, P.O. Box 26806, Raleigh, North Carolina 27611, Telephone (919) 790-2852.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an environmental impact statement (EIS) on a proposed Charlotte West Outer Loop in Charlotte. The proposed action would be the construction of a multilane divided, controlled access highway on new location from I-77 near the South Carolina state line northward to NC 27. The completed outer belt facilities will provide for circumferential travel and will relieve traffic along the existing inner loop (Eastway Drive and Woodlawn Road). The proposed action is part of the 1983 Charlotte-Mecklenburg Thoroughfare Plan.

Alternatives under consideration include (1) the "no-build", (2) improving the existing facilities and (3) a controlled access highway on new location.

Letters describing the proposed action and soliciting comments are being sent to appropriate Federal, State and local agencies. A public meeting with neighborhood groups and local officials will be held in the study area. A public hearing will also be held. Information on the time and place of the public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be direct to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 3, 1988.

Max Tate,

District Engineer, FHWA, Raleigh, North Carolina.

[FR Doc. 88-18171 Filed 8-10-88; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Newton, Rockdale, Walton and Gwinnett Counties, GA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public of the withdrawal of the October 15, 1987 Notice of Intent to prepare an Environmental Impact Statement for a proposed new location four lane divided highway beginning at I-20 in Newton County and ending at I-85 in Gwinnett County.

FOR FURTHER INFORMATION CONTACT:

Dennis L. Merida, District Engineer, Federal Highway Administration, Suite 300, 1720 Peachtree Road, N.W., Atlanta, Georgia 30367, telephone (404) 347-4750, or Frank L. Danchetz, P.E., State Environmental/Location Engineer, Georgia Department of Transportation, Office of Environment/Location, 3993

Aviation Circle, Atlanta, Georgia 30336, telephone (404) 699-4401.

SUPPLEMENTARY INFORMATION: The Georgia Department of Transportation has suspended project activities on this highway because of funding constraints. If and when project development activities are resumed, a new Notice of Intent will be issued identifying the scope of the project and the proposed early involvement program.

(The Catalog of Federal Domestic Assistance Program Number is 20.250, *Highway Research, Planning and Construction*. Georgia's approved clearinghouse review procedures apply to this program.)

Issued on: August 5, 1988.

Dennis L. Merida,

District Engineer, Federal Highway Administration, Atlanta, Georgia.

[FR Doc. 88-18172 Filed 8-10-88; 8:45 am]

BILLING CODE 4910-22-M

[FHWA Docket No. MC-88-12]

Hours of Service of Drivers; Waiver Request; Towing and Recovery Association of America, Inc.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for waiver; request for comments.

SUMMARY: In accordance with section 206(f) of the Motor Carrier Safety Act of 1984, 49 U.S.C. App. 2505(f), the FHWA hereby provides notice that it has received, from the Towing and Recovery Association of America, Inc., a request for a waiver of the hours of service requirements of 49 CFR Part 395 for tow truck operators responding to an emergency condition at the request of a law enforcement or emergency response official.

DATE: Comments must be received on or before September 12, 1988.

ADDRESSES: Submit written signed comments to FHWA Docket No. MC-88-12, Room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m. e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT:

Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366-2981, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366-1350, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW.,

Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The Towing and Recovery Association of America, Inc. (TRAA) has requested relief from the hours of service requirements of Part 395, Hours of Service of Drivers, of the FMCSR's for tow truck operators responding to an emergency condition at the request of a law enforcement or emergency response official. Specifically, the TRAA is requesting "an allowance provision within the FMCSR which would permit a tow truck operator to respond to any emergency situation during his/her off-duty time, even though he/she may not yet have accumulated eight (8) consecutive off-duty hours; provided however, that the driver accumulate at least eight (8) total hours off-duty time before and after the emergency incident(s) before returning to work for his/her regular workshift."

The TRAA contends that:

1. The nature of the tow truck business is such that the service is almost always provided on a "call and demand" basis, often under emergency conditions.

2. A tow truck driver responds to an accident at the request of the law enforcement agency or emergency response official in charge at the accident scene.

3. Motor vehicle accidents are fortuitous events; they occur at random times and places, and are of varying degrees of seriousness and complexity.

4. Highway accidents are unforeseen contingencies that cannot be anticipated.

5. Until an accident occurs and a call is received from a law enforcement agency, a towing company has no way of knowing (a) how many tow trucks and drivers will be required, (b) what type vehicles will be required, (c) how far away the emergency scene will be, (d) where the disabled vehicle is to be transported, and (e) how much time will be required to complete the assignment.

6. The normal scheduling practice utilized throughout the Nation is for a tow truck driver to work a regular 8- to 10-hour day shift and then be relieved of duty. [Emphasis added]

7. Full staffed nighttime shifts are uncommon due to normally low call volume and the speculative and uncertain nature of accident calls from law enforcement agencies.

8. Off duty, day shift drivers may be called upon to work at night if an accident occurs that requires additional towing/recovery equipment or specially trained recovery personnel.

The FHWA views motor vehicle accidents as unforeseen happenings that cannot be anticipated. Clearing the highways of wrecked or disabled vehicles that impede the flow of traffic clearly enhances public safety on those highways. Responding to the call of a law enforcement or emergency response official in charge at an accident scene serves the interests of highway safety well. To adequately protect life and property, such action should be completed in the shortest possible time and should not be inhibited unnecessarily.

The FHWA is seeking comments from interested parties, especially State law enforcement officials charged with the responsibility of enforcing the hours of service regulations. Further, information is being sought concerning the type of restrictions or limitations that should be placed on such a waiver if granted.

Copies of the petition for waiver have been placed in the public docket identified above. Interested parties may comment on this petition.

(49 U.S.C. App. 2505; 49 U.S.C. 3102; 49 CFR 1.48.)

Issued on: August 4, 1988.

Robert E. Farris,

Federal Highway Administrator.

[FR Doc. 88-18158 Filed 8-10-88; 8:45 am]

BILLING CODE 4910-22-M

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in June 1988. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letter EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
3330-X	DOT-E 3330	Babcock & Wilcox Co., Lynchburg, VA.	49 CFR 173.214(b), 173.214(d).....	To authorize use of non-DOT specification insulated containers overpacked in DOT Specification 17C, 17H, or 37A metal drums, for transportation of certain flammable solid materials. (Modes 1 and 2.)
3330-X	DOT-E 3330	Western Zirconium, Inc., Ogden, UT.	49 CFR 173.214(b), 173.214(d).....	To authorize use of non-DOT specification insulated containers overpacked in DOT Specification 17C, 17H, or 37A metal drums, for transportation of certain flammable solid materials. (Modes 1 and 2.)
3330-X	DOT-E 3330	Teledyne Wah Chang Albany Corp., Albany, OR.	49 CFR 173.214(b), 173.214(d).....	To authorize use of non-DOT specification insulated containers overpacked in DOT Specification 17C, 17H, or 37A metal drums, for transportation of certain flammable solid materials. (Modes 1 and 2.)
3330-X	DOT-E 3330	General Electric Co., Schenectady, NY.	49 CFR 173.214(b), 173.214(d).....	To authorize use of non-DOT specification insulated containers overpacked in DOT Specification 17C, 17H, or 37A metal drums, for transportation of certain flammable solid materials. (Modes 1 and 2.)
4453-X	DOT-E 4453	Kentucky Powder Co., Lexington, KY.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1 and 3.)
4453-P	DOT-E 4453	Cherokee Products, Inc., Jefferson City, TN.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 4453 (Modes 1 and 3.)
4453-P	DOT-E 4453	Northeast Pump Service Corp., Keene, NH.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 4453 (Modes 1 and 3.)
4453-P	DOT-E 4453	Laurel Explosives, East Bernstadt, KY.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 4453 (Modes 1 and 3.)
4850-P	DOT-E 4850	Teledyne McCormick Selph, Hollister, CA.	49 CFR 173.100(cc), 175.3.....	To become a party to exemption 4850 (Modes 1, 2, and 4.)
5022-P	DOT-E 5022	Hercules, Inc., Magna, UT.....	49 CFR 174.101(L), 174.104(d), 174.112(a), 174.86, 177.834(L)(1).	To become a party to exemption 5022 (Modes 1 and 2.)
5951-X	DOT-E 5951	Van Waters & Rogers, Inc., Spartanburg, SC.	49 CFR 173.314(c).....	To authorize transport of chlorine or sulfur dioxide, in DOT Specification 106A500 type tank. (Modes 1 and 2.)
6126-P	DOT-E 6126	Monsanto Agricultural Co., St. Louis, MO.	49 CFR 173.253(a).....	To become a party to exemption 6126 (Modes 1 and 3.)
6518-X	DOT-E 6518	Union Carbide Corp., Danbury, CT.....	49 CFR 172.101, 172.302, 173.119, 173.134, 173.154.	To authorize shipment of specified pyrophoric liquids and solids, water reactive solid and certain other flammable liquids, in non-DOT specification steel portable tanks or cylinders. (Modes 1 and 3.)
6518-X	DOT-E 6518	Syntex Chemicals, Inc., Boulder, CO.	49 CFR 172.101, 172.302, 173.119, 173.134, 173.154.	To authorize shipment of specified pyrophoric liquids and solids, water reactive solid and certain other flammable liquids, in non-DOT specification steel portable tanks or cylinders. (Modes 1 and 3.)
6530-X	DOT-E 6530	Big Three Industries, Inc., Houston, TX.	49 CFR 173.302(c).....	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1 and 2.)
6530-X	DOT-E 6530	FIBA Leasing Co./Mass Oxygen Equipment Co., Inc. Westboro, MA.	49 CFR 173.302(c).....	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1 and 2.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
6530-P 6538-X	DOT-E 6530 DOT-E 6538	SOS Gases, Inc., Kearny, NJ..... Pan Products, Inc., Macedonia, OH.....	49 CFR 173.302(c)..... 49 CFR 173.304(d)(3)(ii), 178.33.....	To become a party to exemption 6530 (Modes 1 and 2.) To authorize use of a non-DOT specification inside nonre- fillable metal container, for transportation of a certain flammable gas. (Modes 1 and 3)
6538-X	DOT-E 6538	Optimus, Inc., Bridgeport, CT.....	49 CFR 173.304(d)(3)(ii), 178.33.....	To authorize use of a non-DOT specification inside nonre- fillable metal container, for transportation of a certain flammable gas. (Modes 1 and 3)
6543-X	DOT-E 6543	Airco, The BOC Group, Inc., Murray Hill, NJ.	49 CFR 173.119, 173.135(a)(6), 173.136(a)(5), 173.245, 173.247, 173.271, 175.3.	To authorize shipment of certain corrosive and flammable liquids in non-DOT specification 16 gauge, Type 304 stainless steel cylinders and/or 14 gauge Type 316 stainless steel cylinders. (Modes 1, 2, 3, and 4.)
6543-X	DOT-E 6543	Union Carbide Corp., Danbury, CT.....	49 CFR 173.119, 173.135(a)(6), 173.136(a)(5), 173.245, 173.247, 173.271, 175.3.	To authorize shipment of certain corrosive and flammable liquids in non-DOT specification 16 gauge, Type 304 stainless steel cylinders and/or 14 gauge Type 316 stainless steel cylinders. (Modes 1, 2, 3, and 4.)
6765-X	DOT-E 6765	Bureau of Mines, Amarillo, TX.....	49 CFR 173.318(a), 176.76(h)(4).....	To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and nonflammable gas. (Modes 1 and 3.)
6801-P	DOT-E 6801	Hach Co., Ames, IA.....	49 CFR 173.119(a)(7), 173.119(e)(1).	To become a party to exemption 6801 (Modes 1 and 2.)
6874-X	DOT-E 6874	Harrisons & Crosfield (Pacific), Inc., Emeryville, CA.	49 CFR 172.101, 173.370(a)(13).....	To authorize transport of sodium and potassium cyanides in non-DOT specification wooden boxes. (Modes 1, 2, and 3.)
6932-X	DOT-E 6932	Eurotainer, S.A., Paris, France.....	49 CFR 173.264(b)(4).....	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of anhydrous hydro- fluoric acid. (Modes 1 and 3.)
6932-X	DOT-E 6932	Compagnie des Containers Reser- voirs, Paris, France.	49 CFR 173.264(b)(4).....	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of anhydrous hydro- fluoric acid. (Modes 1 and 3.)
6960-X	DOT-E 6960	Pepsi-Cola Co., Purchase, NY.....	49 CFR Parts 100-199.....	To authorize use of DOT Specification and non-DOT spec- ification stainless steel drums, tight-head, with rated ca- pacity not exceeding 55 gallons, for transportation of certain corrosive liquids. (Modes 1, 2, and 3.)
7052-X	DOT-E 7052	Technical Oil Tool Corp., Houston, TX.	49 CFR 172.101, 172.420, 175.3.....	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	General Electric Co., Philadelphia, PA.	49 CFR 172.101, 172.420, 175.3.....	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Priebe Electronics, Redmond, WA.....	49 CFR 172.101, 172.420, 175.3.....	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Clifton Precision, Springfield, PA.....	49 CFR 172.101, 172.420, 175.3.....	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	W.R. Grace & Co., Columbia, MD.....	49 CFR 172.101, 172.420, 175.3.....	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Motorola, Inc., Fort Lauderdale, FL.....	49 CFR 172.101, 172.420, 175.3.....	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Gould, Inc., North Andover, MA.....	49 CFR 172.101, 172.420, 175.3.....	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Singer Co., Belmont, CA.....	49 CFR 172.101, 172.420, 175.3.....	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7259-X	DOT-E 7259	FMC Corp., Philadelphia, PA.....	49 CFR 176.76(g)(5).....	To authorize use of DOT Specification 56 aluminum porta- ble tanks, for shipment of phosphorus pentasulfide by water. (Mode 3.)
7259-X	DOT-E 7259	Stauffer Chemical Co., Westport, CT.	49 CFR 176.76(g)(5).....	To authorize use of DOT Specification 56 aluminum porta- ble tanks, for shipment of phosphorus pentasulfide by water. (Mode 3.)
7259-X	DOT-E 7259	Monsanto Chemical Co., St. Louis, MO.	49 CFR 176.76(g)(5).....	To authorize use of DOT Specification 56 aluminum porta- ble tanks, for shipment of phosphorus pentasulfide by water. (Mode 3.)
7259-X	DOT-E 7259	Exxon Chemical Americas, Hous- ton, TX.	49 CFR 176.76(g)(5).....	To authorize use of DOT Specification 56 aluminum porta- ble tanks, for shipment of phosphorus pentasulfide by water. (Mode 3.)
7285-X	DOT-E 7285	Compagnie des Containers Reser- voirs, Paris, France.	49 CFR 173.315(a).....	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of certain nonflamma- ble, liquefied gases. (Modes 1, 2, and 3.)
7285-X	DOT-E 7285	Parlefer S. A. R. L., Paris, France.....	49 CFR 173.315(a).....	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of certain nonflamma- ble, liquefied gases. (Modes 1, 2, 3.)
7526-P	DOT-E 7526	Soltex Polymer Corp., Deer Park, TX.	49 CFR 173.134.....	To become a party to exemption 7526 (Modes 1 and 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7616-P	DOT-E 7616	CSX Transportation, Inc., Jacksonville, FL.	49 172.200(a), CFR 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To become a party to exemption 7616 (Mode 2.)
8013-X	DOT-E 8013	Air Products & Chemicals, Inc., Allentown, PA.	49 CFR 173.302, 173.304, 175.3	To authorize use of DOT Specification 4E cylinders, for transportation of certain nonliquefied flammable and nonflammable gases. (Modes 1, 4, and 5.)
8013-X	DOT-E 8013	Union Carbide Corp., Danbury, CT.	49 CFR 173.302, 173.304, 175.3	To authorize use of DOT Specification 4E cylinders, for transportation of certain nonliquefied flammable and nonflammable gases. (Modes 1, 4, and 5.)
8037-X	DOT-E 8037	Mauser Packaging, Ltd., Litchfield, CT.	49 CFR 173.127, 173.175, 173.184, 178.224.	To authorize manufacture, marking and sale of non-DOT specification fiberboard drums, for shipment of wet nitrocellulose, and lacquer base or lacquer chips, dry. (Modes 1, 2, and 3.)
8059-X	DOT-E 8059	EFI Corp., d.b.a. EFIC, San Jose, CA.	49 CFR 173.302(a)(1), 173.304(a), 173.304(d), 175.3.	To authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic full composite cylinders, for transportation of certain flammable and nonflammable compressed gases. (Modes 1, 2, 3, 4, and 5.)
8084-P	DOT-E 8084	Austin Powder Co., Beachwood, OH.	49 CFR 173.65(a)(5)	To become a party to exemption 8084 (Modes 1, 2, and 3.)
8125-X	DOT-E 8125	Compagnie des Containers Reservoirs, Paris, France.	49 CFR 173.123, 173.315	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of certain flammable and nonflammable gases and flammable liquids. (Modes 1, 2, and 3.)
8196-X	DOT-E 8196	GCS Container Service, SA, Chiasso, Switzerland.	49 CFR 173.119, 173.315(a), 178.245.	To authorize use of a non-DOT IMO type 5 specification portable tank, for transportation of certain compressed gases. (Modes 1, 2, and 3.)
8337-X	DOT-E 8337	Industrial & Municipal Engineering, Inc., Galva, IL.	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT Specification cargo tanks complying with DOT specification MC-307/312 except for bottom outlet valve variation, for shipment of liquid and semi-solid waste material. (Mode 1.)
8387-X	DOT-E 8387	FMC Corp., Philadelphia, PA.	49 CFR 173.266(e)	To authorize transport of hydrogen peroxide in DOT specification MC-312 cargo tank aboard cargo vessel. (Mode 3.)
8426-P	DOT-E 8426	Containerized Chemical Disposal, Inc., Montclair, CA.	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To become a party to exemption 8426 (Mode 1.)
8445-X	DOT-E 8445	University of Maryland, Baltimore, MD.	49 CFR Part 173, Subpart D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8445-X	DOT-E 8445	CECOS International, Inc., Buffalo, NY.	49 CFR 173, Subpart D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8458-X	DOT-E 8458	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.31(c) Table 1, 179.202-12(b).	To authorize conversion of DOT Specification 105A500W or 112A400W tank cars to a DOT Specification 111A100W2 tank car, for transportation of certain corrosive materials and oxidizers. (Mode 2.)
8509-X	DOT-E 8509	Mobay Corp., Pittsburgh, PA.	49 CFR 173.263(a)(9), 179.201-1	To authorize use of a safety relief valve in lieu of a safety vent in DOT Specification 111A100W5 tank car tanks, for transportation of hydrochloric acid. (Mode 2.)
8518-P	DOT-E 8518	Barnett Trucking, Inc., Fillmore, CA.	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To become a party to exemption 8518 (Mode 1.)
8569-P	DOT-E 8569	Allied-Signal Aerospace Co., Torrance, CA.	49 CFR 172.101 Column 6(b), 173.276, 175.3.	To become a party to exemption 8569 (Modes 1, 3, and 4.)
8760-X	DOT-E 8760	Barton Solvents, Inc., Des Moines, IA.	49 CFR 172.328, 172.334(b)	To authorize display of FLAMMABLE placards, showing identification 1993, cargo tanks that have six or more compartments and that are used to ship one or more materials. (Mode 1.)
8812-X	DOT-E 8812	The Protectoseal Co., Bensenville, IL.	49 CFR 173.119, 178.89	To authorize manufacture, marking and sale of non-DOT specification metal drum of five-gallon capacity and comparable to DOT specification 5L, for shipment of certain flammable liquids. (Mode 1.)
8820-X	DOT-E 8820	SLEMI, Paris, France.	49 CFR 173.315	To authorize use of a non-DOT specification IMO Type 5 portable tank, for transportation of liquefied compressed gases. (Modes 1, 2, and 3.)
8820-X	DOT-E 8820	SLEMI, Paris, France.	49 CFR 173.315	To authorize use of a non-DOT specification IMO Type 5 portable tank, for transportation of liquefied compressed gases. (Modes 1, 2, and 3.)
8845-X	DOT-E 8845	Pro-Log, Denver City, TX.	49 CFR 173.110(c)(1), 173.80(b), 173.80(c).	To authorize transport of charged oil well jet perforating guns with detonators attached. (Modes 1 and 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8850-X	DOT-E 8850	Hoover Group, Inc., Beatrice, NE.....	49 CFR 173, Subpart D, E, F, H, Subpart K.	To authorize manufacture marking and sale of non-DOT specification stainless steel, cubical-shaped container of 70-gallon capacity, for shipment of those liquid hazardous materials for which DOT Specification 5, 5B, 5C or 17E drums are prescribed. (Modes 1, 2, and 3.)
8854-X	DOT-E 8854	Compagnie des Containers Reservoirs, Paris, France.	49 CFR 173.264(b)(4).....	To authorize use of non-DOT specification IMO Type 5 portable tanks for transportation of anhydrous hydrofluoric acid. (Modes 1, 2, and 3.)
8862-X	DOT-E 8862	Union Carbide Corp., Danbury, CT....	49 CFR 173.119, 173.124(a)(4), 173.305.	To authorize shipment of propylene oxide and ethylene oxide with an inert gas blanket in a DOT Specification 5P lagged steel drum. (Mode 1.)
8917-P	DOT-E 8917	Fluor Daniel, Sugar Land, TX.....	49 CFR 173.182, 176.400.....	To become a party to exemption 8917 (Modes 1, 2, and 3.)
8932-X	DOT-E 8932	Catalyst Resources, Inc., Elyria, OH.	49 CFR 173.119(m), 173.221.....	To authorize shipment of organic peroxide, in tank motor vehicles complying with DOT Specifications MC-307 and MC-312 cargo tanks. (Mode 1.)
9002-X	DOT-E 9002	PepsiCo, Inc., Purchase, NY.....	49 CFR 178.210-10(a)(2).....	To authorize shipment of flavoring components in non-DOT specification fiberboard boxes with inside polyethylene bottles. (Modes 1, 2, and 3.)
9074-X	DOT-E 9074	U.S. Department of Energy, Washington, DC.	49 CFR 173.302, 175.3.....	To authorize use of non-DOT specification metal, single trip, inside containers, for transportation of a nonflammable gas. (Modes 1, 2, 3, 4, and 5.)
9166-X	DOT-E 9166	Comptank Corp., Bothwell, Ontario, CN.	49 CFR 173.119 (a), (m), 173.346(a), 178.340, 178.342, 178.343, Part 173, Subpart F.	To authorize manufacture, marking and sale of cargo tanks manufactured from glass fiber reinforced plastics, for transportation of flammable liquids, corrosive materials and poison B materials. (Mode 1.)
9172-X	DOT-E 9172	CECOS International, Inc., Buffalo, NY.	49 CFR 173.245b, 173.365.....	To authorize manufacture, marking and sale of non-DOT specification nonreusable fiberboard bulk box made of triple-wall corrugated fiberboard, for shipment of various corrosive and poison B solids. (Mode 1.)
9184-X	DOT-E 9184	Cyanamid Canada, Inc., East Willowdale, Canada.	49 CFR 173.178.....	To authorize shipment of calcium carbide in polyethylene lined woven polypropylene collapsible bags in truckload or carload lots only. (Modes 1 and 2.)
9211-X	DOT-E 9211	Maersk Line, Ltd., Madison, NJ.....	46 CFR 146.29-35(f).....	To authorize installation and operation of electrically-powered lighting, air conditioning, alarm, fire detection, and cargo-handling systems in cargo holds containing Class A, B and C explosives in a Maritime Prepositioning Ship (TAKX). (Mode 3.)
9211-X	DOT-E 9211	Waterman Steamship Corp., New Orleans, LA.	46 CFR 146.29-35(f).....	To authorize installation and operation of electrically-powered lighting, air conditioning, alarm, fire detection, and cargo-handling systems in cargo holds containing Class A, B and C explosives in a Maritime Prepositioning Ship (TAKX). (Mode 3.)
9221-X	DOT-E 9221	Applied Companies, San Fernando, CA.	49 CFR 173.302(a)(4), 175.3, 178.44.	To authorize manufacture, marking and sale of non-DOT specification girth welded stainless steel cylinders, for shipment of nonflammable gases. (Modes 1, 2, and 4.)
9355-P	DOT-E 9355	Panasonic Industrial Co., Secaucus, NJ.	49 CFR Parts 100-177.....	To become a party to exemption 9355 (Modes 1, 2, 3, 4, and 5.)
9388-X	DOT-E 9388	Cominco American, Inc., Spokane, WA.	49 CFR 173.314(e).....	To authorize use of DOT specification tank cars which have had the amount of liquefied gas loaded into the tank measured by a metering device. (Mode 2.)
9502-X	DOT-E 9502	Callery Chemical Co., Pittsburgh, PA.	49 CFR 173.302(g).....	To authorize use of DOT Specification 3A and 3E cylinders for transportation of diborane and diborane mixtures. (Modes 1, 2, and 3.)
9610-X	DOT-E 9610	Hercules, Inc., Wilmington, DE.....	49 CFR 172.203(a), (e), 172.204, 173.29 (a), (d), Part 107, Appendix B, Parts 171-189.	To authorize transport of DOT Specification 21C fiber drums which contain not more than 5 grams of smokeless powder essentially without regulation. (Modes 1 and 2.)
9632-X	DOT-E 9632	Eurotainer S.A., Paris, France.....	49 CFR 173.315, 178.245.....	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of flammable and nonflammable liquefied compressed gases. (Modes 1, 2, and 3.)
9722-X	DOT-E 9722	Russell-Stanley Corp., Red Bank, NJ.	49 CFR 173.266.....	To authorize pivaloyl chloride (trimethylacetyl chloride) classed as a corrosive material, as an additional commodity. (Modes 1, 2, and 3.)
9723-P	DOT-E 9723	Safety Specialists, Inc., Santa Clara, CA.	49 CFR 177.848(b).....	To become a party to exemption 9723 (Mode 1.)
9769-P	DOT-E 9769	Aqua-Tech, Inc., Port Washington, WI.	49 CFR 176.83, 177.848.....	To become a party to exemption 9769 (Modes 1 and 3.)
9851-X	DOT-E 9851	Trans World Airlines, Inc., Kansas City, MO.	49 CFR Parts 100-199.....	To authorize transport of insulated dewars containing liquid nitrogen in the cabin of a passenger aircraft under special conditions. (Mode 5.)
9851-P	DOT-E 9851	Delta Air Lines, Inc., Atlanta, GA.....	49 CFR Parts 100-199.....	To become a party to exemption 9851 (Mode 5.)
9941-X	DOT-E 9941	Morton Thiokol, Inc., Huntsville, AL....	49 CFR 173.88(e)(2)(ii), 173.92(a)(i), 173.92(b).	To authorize transport of rocket motors in a propulsive state with igniters installed. (Mode 1.)
9941-X	DOT-E 9941	McDonnell Douglas Astronautics Co., Huntington Beach, CA.	49 CFR 173.88(e)(2)(ii), 173.92(a)(i), 173.92(b).	To authorize transport of rocket motors in a propulsive state with igniters installed. (Mode 1.)

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9874-N.....	DOT-E 9874	The Dow Chemical Co., Freeport, TX.	49 CFR 177.834(i)(3).....	To authorize personnel to observe loading and unloading of cargo tanks by viewing video camera monitors in a control center instead of viewing within 25 feet of the cargo tanks. (mode 1)
9900-N.....	DOT-E 9900	Natico, Inc., Chicago, IL.....	49 CFR 173.217, 178.224-1.....	To authorize manufacture, marking and sale of non-DOT specification fibre drums conforming to DOT 21C Specification fibre drums, except the tops or covers are constructed of polyethylene, for shipment of calcium hypochloride, hydrated. (modes 1, 2, 3)
9901-N.....	DOT-E 9901	J.T. Baker Inc., Phillipsburg, NJ.....	49 CFR 173.268, 173.269.....	To authorize shipment of nitric acid, classed as oxidizer or corrosive material, and perchloric acid, classed as oxidizer, in a DOT Specification 12A fiberboard box, with inside glass bottles cushioned and encapsulated by molded polystyrene inserts. (modes 1, 2, 3)
9421-N.....	DOT-E 9909	Taylor-Wharton, Division of Harsco Corp., Harrisburg, PA.	49 CFR 173.301(h), 173.302, 173.304, 173.34(a)(1), 175.3, 178.37.	To authorize manufacture, marking and sale of a non-DOT specification steel cylinder complying in part with DOT 3AA specification, for transportation of certain flammable and nonflammable gases. (modes 1, 2, 3, 4)
9917-N.....	DOT-E 9917	Essex Environmental Industries, Inc., Hurst, TX.	49 CFR 173.119, 173.125, 173.266, 178.19, 178.253, Part 173, Subpart F.	To authorize manufacture, marking and sale of non-DOT specification rotationally molded, cross-linked polyethylene portable tank, for shipment of corrosive materials, flammable liquids, an oxidizer, or a blasting agent. (modes 1, 2, 3)
9921-N.....	DOT-E 9921	Altus Corp., San Jose, CA.....	49 CFR 173.206, 173.247.....	To authorize shipment of packages containing reserve-activated lithium thionyl chloride battery module. (mode 1)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulations(s) affected	Nature of exemption thereof
EE 7052-X..	DOT-E 7052	Engineered Assemblies Corp., Clifton, NJ.	49 CFR 172.101, 172.420, 175.3.....	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (modes 1, 2, 3, 4)
EE 8009-X..	DOT-E 8009	Pressure Transport, Inc., Austin, TX.	49 CFR 172.101, 173.301(d)(2), 173.302(a)(3).	To authorize use of DOT Specification 3AA cylinders made of 4130X steel, for transportation of a compressed natural gas. (mode 1)
EE 8450-X..	DOT-E 8450	Atlantic Research Corp., Camden, AR.	49 CFR 173.92.....	To authorize transport of rocket motors without igniters, in non-DOT Specification polyethylene containers. (mode 1)
EE 8582-X..	DOT-E 8582	Atchison, Topeka and Santa Fe Railway Co., Chicago, IL.	49 CFR Parts 100-177.....	To authorize transportation of railway track torpedoes and fuses packed in metal kits, in motor vehicles by railroad maintenance crews as non-regulated rail carrier equipment. (mode 1)
EE 8747-X..	DOT-E 8747	Copps Industries, Inc., Menomonee Falls, WI.	49 CFR 173.245, 173.249, 175.3.....	To authorize shipment of certain alkaline corrosive liquids, n.o.s., in an unlined 28/26 gauge DOT Specification 37C80 steel drum of five gallon capacity. (modes 1, 2, 3, 4)
EE 8885-X..	DOT-E 8885	Copps Industries, Inc., Menomonee Falls, WI.	49 CFR 173.245, 173.249, 175.3.....	To authorize shipment of certain alkaline corrosive liquids, n.o.s., in an unlined tin can, overpacked in a non-DOT specification removable head molded polyethylene pail of five or six-gallon capacity, also containing a nonhazardous resin mix. (modes 1, 2, 3, 4)
EE 9931-X..	DOT-E 9931	American Cyanamid Co., Wayne, NJ.	49 CFR 179.201-1.....	To authorize shipment of nitric acid in a DOT Specification 111A60W7 tank car tank which is equipped with a 45 psi safety valve. (mode 2)
EE 9940-X..	DOT-E 9940	G.E. Reuter-Stokes, Twinsburg, OH..	49 CFR 172.400, 173.306, 175.3.....	To authorize manufacture, marking and sale of non-DOT specification, metal, single trip, inside containers, described as hermetically sealed electron tube devices. (modes 1, 2, 3, 4)
EE 9977-N..	DOT-E 9977	Hercules Aerospace Co., Magna, UT.	49 CFR 173.88(e)(2)(ii), 173.92(a)(i), 173.92(b).	To authorize transport of rocket motors in a propulsive state, with igniters installed. (mode 1)

WITHDRAWAL EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9922-N.....	GOEX, Inc., Cleburne, TX.....	49 CFR 173.65(a)(4).....	To authorize shipment of high explosives, Class A, shaped charges, in DOT Specification 14, 15A, 16 and 19B wooden boxes with a maximum gross weight of 2,000 pounds instead of the present limitation of 140 pounds. (modes 1, 3, 4)

Denials

9120-X—Request by Western Atlas International, Inc. Houston, TX to authorize pressure testing of the pressure vessel at a longer interval, at least every 5 years, than presently prescribed denied June 28, 1988.

9913-N—Request by ETI Explosives Technologies International, Inc. Wilmington, DE to authorize shipment of a new explosive sample to a laboratory for examination, when the amount of the sample to be shipped is increased to fifty pounds in lieu of the prescribed five pounds denied June 2, 1988.

Issued in Washington, DC, on 08-1-1988.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

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UNITED STATES INFORMATION AGENCY

Bureau of Educational and Cultural Affairs University Affiliations Program: Application Notice for Fiscal Year 1989

Applications for grants from U.S. institutions of higher education are invited under the University Affiliations Program.

Authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87-256 (Fulbright-Hays Act). The purpose of the Fulbright program is "to enable the government of the United States to increase mutual understanding between the people of the United States and people of other countries."

(Information collection involved in this program has been approved by OMB Action Number 3116-0179, expiration date 11/30/89.)

Summary

The Bureau of Educational and Cultural Affairs of the United States Information Agency (USIA) announces the University Affiliations Program which provides one-time only institutional grants to support partnerships between U.S. and non-U.S. institutions of higher education. The goals of the program are to: (1) Foster and strengthen institutional relationships between U.S. and foreign institutions of higher education; and (2) assist institutions to establish new affiliations or develop new programs for existing affiliations not previously funded by USIA's Affiliations Program. The program goals will be accomplished through exchange of faculty and staff between participating U.S. and foreign institutions.

Feasibility studies to plan affiliations and projects focusing on technical assistance will not be considered in this program.

In the U.S., program participation is open to: (a) Accredited U.S. institutions of higher education, including graduate schools, four-year and two-year colleges and universities, and community colleges; consortia of universities (proposals may be submitted by a member institution or an organization with authority to represent the consortium). For consortia of institutions, specific responsibilities of each institution and aspects of proposed program participation should be defined. (b) Independent research institutes applying jointly with universities.

Overseas participation is open to recognized degree-granting institutions of higher education and independent research institutes.

Eligible institutes (U.S. and foreign) are defined as reputable, non-partisan, non-profit, private or public institutions such as think-tanks/research institutions that have produced long-term scholarly research; have published in nationally recognized journals or nationally recognized publications; and have national professional recognition. Exchange projects including research institutes will be considered only if proposed exchanges cannot otherwise take place without USIA assistance, and they include an audience that applicants do not normally reach.

Participating institutions exchange faculty and staff for teaching, lecturing, and research assignments of one month or longer in the humanities, social sciences, education, and communications; maintain their faculty/staff on full salary and benefits institution. Proposals for research only will not be considered.

USIA funds may be used only for international travel costs, modest supplements for maintenance expenses, and up to \$1,500 for the purchase of educational materials to be used at and donated to the foreign institution. Institutional overhead is not allowable and all other costs related to the exchange program (including salaries and benefits) must be borne by the participating institutions.

Participants traveling under USIA grant support must be U.S. citizens if representing the U.S. partner institution, and nationals of the country of the foreign partner.

The duration of these one-time only grants is two to three years, and grant amounts range from \$50,000 to \$60,000 depending upon locality. The total request to USIA, covering eligible expenses of both institutions, may not

exceed the maximum allowable for the locality of request, as listed below.

Subject to the availability of funds in Fiscal Year 1989, approximately 25 grants will be available on a competitive basis for specific geographic locations and themes. Awards will reflect Agency priorities and academic considerations. Complete program criteria and application guidelines appear below.

All proposals recommended for funding will be subject to Agency review for conformity to relevant OMB and legal guidelines. Funding of any proposal is subject to the regular procedures, regulations and requirements for Bureau of Educational and Cultural Affairs grants, including review by USIA's Office of General Counsel and submission to the Board of Foreign Scholarships.

USIA also announces a special competition for grants to support exchanges to commemorate the Quincentennial of the discovery of the Americas (see details below).

U.S. institutions should collaborate with their foreign partners on planning and preparing proposals. U.S. institutions are also responsible for the submission of proposals which must reach USIA no later than 5:00 p.m., EST, Wednesday, January 18, 1989.

Country and Discipline Eligibility

Because one of the program's purposes is to strengthen ties between the U.S. and many areas of the world, geographic and thematic priorities have also been identified.

Africa: Proposals will be considered for any discipline(s) in the *Humanities, Social Sciences, Education and Communications* for all countries listed below; however, special consideration will be given to proposals in any of the fields noted after each country.

Applicants should focus on one or two specific fields of interest.

The maximum amount of each grant is \$60,000.

List of eligible countries and disciplines:

Benin: Social Sciences.
Botswana: Public Administration, Women's Studies, Theory and Practice of Research.

Burundi: Project in any eligible discipline.

Cameroon: Business Management.
Congo: Afro-American Studies, Communications, History/Archeology, Law.

Ethiopia: Social Sciences with emphasis on History, Anthropology and Sociology; Management with emphasis on Business Administration, Public Administration and Economics.

Ghana: Library Science, Business Administration, Special Education and Science Education.

Kenya: Law, Education.

Lesotho: Project in any eligible discipline.

Liberia: Project in any eligible discipline.

Mauritius: Women's Studies.

Mali: Project in any eligible discipline.

Mozambique: African Studies and Linguistics, International Relations, English Language and Linguistics.

Niger: Economics with emphasis on Development Economics.

Nigeria: Project in any eligible discipline.

Rwanda: Management, Education, Law, Humanities.

Senegal: International Relations, Political and Social Science, American Literature, Economics, Teacher Training, Mass Communications.

Somalia: Languages, Political Science, Economics, Education, and Agricultural Education.

South Africa: Law and Human Rights, Comparative Constitutional Law, Business Management, English Language Teaching, Education.

Swaziland: Humanities—Linguistics, Performing Arts/Drama, English, History, Law and Business Administration.

Tanzania: Political Science and Public Administration, Development Studies, Economics, History, Education, Languages and Linguistics, Law, Literature, Business Administration including Computer Applications.

Togo: Project in any eligible discipline.

Uganda: Journalism, Economics & Business, Education.

Zimbabwe: Project in any eligible discipline.

American Republics: Proposals for the countries and fields listed below will be considered in 1989. The maximum amount of each grant is \$50,000.

List of eligible countries:

Argentina: Economics, History.

Barbados: Humanities, Social Sciences, Communications.

Belize: Economics, History.

Bolivia: Education.

Brazil: Law.

Chile: Humanities, Social Sciences, Communications.

Colombia: Law, Communications.

Dominican Republic: Economics, History.

Ecuador: Economics, History.

Guyana: Economics, History.

Jamaica: Humanities, Social Sciences, Communications.

Mexico: Law.

Paraguay: Economics, History.

Peru: Economics, History.

Trinidad and Tobago: Law.

Uruguay: Economics, History.

Venezuela: Economics.

East Asia/Pacific: Only proposals for the following countries or localities will be considered in 1989. Proposals will be considered for any discipline(s) in the Humanities, Social Sciences, Education and Communications for all countries listed below; however special consideration will be given to proposals in any of the fields noted after each country. The maximum amount of each grant is \$60,000.

List of eligible countries and provinces, where applicable:

Australia: Project in any eligible discipline.

New Zealand: Project in any eligible discipline.

Singapore: Project in any eligible discipline.

Thailand: American and/or Thai Studies.

Pacific Islands: Humanities, Secondary Education and/or University Administration, Planning and Public Policy.

Papua New Guinea: Project in any eligible discipline.

Philippines: Project in any eligible discipline.

China: Constitutional Law, Business Law, and/or Copyright Law, Business Management and Foreign Investment, International Relations. In China only the following provinces are eligible: Heilongjiang, Jilin, Liaoning, Sichuan, Yunnan, Guizhou, Guangxi, Xinjiang, Xizang (Tibet), Qinghai, and Gansu.

Europe: Proposals will be considered for any discipline(s) in the Social Sciences or the Humanities. Applicants should focus on one or two specific topics of interest. The maximum amount of each grant is \$50,000.

List of eligible countries:

German Democratic Republic, Poland, Spain, Turkey, USSR.

Near East/South Asia: Awards will be considered for proposals in any field(s) in the Humanities, Social Sciences, Communications, and Education. Proposals should focus on one or two specific topics of interest. Provided they meet academic review criteria, USIA will give special consideration to proposals received for funding of activities in the underlined locations where there are not currently or never have been active USIA-sponsored affiliations.

Eligible for grants up to \$50,000 maximum each: Bangladesh; Bhutan; Egypt; Gaza; India; Israel; Jordan; Mauritania; Morocco; Nepal; Pakistan; Sri Lanka; Tunisia; West Bank; the Yemen Arab Republic.

Eligible for grants up to \$60,000 maximum each: Algeria; Bahrain; Iraq; Kuwait; Oman; Qatar; Saudi Arabia; Sudan; Syrian Arab Republic; United Arab Emirates.

N.B.: All proposals for India must be accompanied by proof of approval of the proposed program from the University Grants Commission (UGC) in New Delhi in order to comply with USIA technical review requirements. U.S. institutions are advised to contact Indian partner institutions about this requirement as early as possible, since UGC meetings do not coincide with USIA program deadline. UGC approval must be sought through the Executive Director, U.S. Educational Foundation in India, 12 Hailey Road, New Delhi, India 110001. Tel. 388944 through 388948. Cable USEFI.

Special Competition for Exchanges To Commemorate the Quincentennial of the Discovery of the Americas

USIA also invites applications for a special competition with any country on faculty teaching and/or research projects (up to five grants) which commemorate the Quincentennial of the European discovery of the Americas. Proposals should conform to the general guidelines published in this announcement with the following qualifications:

1. Proposals may be offered in any eligible discipline (social sciences, humanities, education, and communications).
2. The proposal must focus on the discovery of the Americas in 1492, the subsequent colonization of Hispano-America, Brazil or the Caribbean countries, or the European voyages of exploration through 1521.
3. The proposed project should begin no later than fall 1989 and extend through 1992.
4. Eligible foreign partners include appropriate institutions world-wide. Maximum awards for affiliations in each geographic area conform to those stated in the main body of this announcement.
5. Proposals may be for an affiliation between a U.S. institution and one foreign institution as in the regular program, or with two foreign institutions from different geographic areas. For example, a U.S. institution might choose a partner in Latin America and a partner in Europe. In such cases, the maximum award would be \$80,000.

Requirements for Application—University Affiliations Program:

I. Eligibility: Applications on behalf of the collaborating institutions must be

submitted by the U.S. partner. Eligible partner institutions are:

1. U.S.—(a) Accredited institutions of higher education, including graduate schools, four-year and two-year colleges and universities, and community colleges; consortia of universities (proposals may be submitted by a member institution or an organization with authority to represent the consortium).

(b) Independent research institutes applying jointly with universities (defined elsewhere in this announcement).

2. Overseas—Recognized degree-granting institutions of higher education and independent research institutes.

II. *Review Process:* Proposals will be reviewed for technical, academic, and Agency considerations (defined below). Proposals which are technically ineligible (eligibility criteria stated below) will not be forwarded for further review by the academic and Agency review committees.

Proposals must be received by USIA no later than 5:00 p.m. EST, Wednesday, January 18, 1989.

Upon completion of the technical review, all proposals will be acknowledged, and applicants will be notified in writing of the status of their proposals. There will be a grace period to submit any missing documentation. Technically eligible proposals will be forwarded for academic review. Proposals recommended by independent academic review panels will be further considered by USIA review committees. Agency review committees will evaluate proposals based on specific criteria addressing factors of quality, cost-effectiveness, and overall geographical and program balance.

Technical Review Criteria

To meet technical requirements, proposals must be submitted within deadline; the proposal package must consist of the original proposal and fifteen (15) complete copies, including: A cover sheet with names of both institutions, name of foreign country, U.S. and foreign project directors and their deputies, addresses and telephone numbers of project directors, academic fields(s) of proposed project; proposal abstract (approximately two double-spaced pages); narrative (no more than fifteen double-spaced pages); three-column budget (covering international travel, maintenance, and educational materials; see sample below); bio-sketches of program participants (no more than two double-spaced pages each); required letters of agreement, summary of international linkages (individual consortium members and

research institutes must meet this requirement); for research institutes—summary of publications.

Proposed projects must be for a period of two or three years, and be in eligible geographic and academic area(s). See detailed requirements below.

N.B.: U.S. institutions are responsible for assuring complete understanding of and compliance with financial requirements by the foreign partner; and for obtaining the letter of commitment so stating in the specific format described below. No exceptions will be made.

Academic Review Criteria

Proposals are reviewed by independent academic panels (with geographic and discipline expertise) which make recommendations to the Agency based on the following criteria:

1. Soundness of proposal indicating academic quality, as reflected by focused goals and selection of relevant topics and activities, a clear statement of program goals and means to accomplish the goals, detailed description of project with statement of how the proposed project will be implemented and evaluated, etc;

2. Evidence that theme(s) of proposed project fit priority field(s) stated in the announcement;

3. Evidence of strong mutual benefits to the institutions involved in the exchanges and a description of how each institution would benefit;

4. Feasibility of the program plan as it relates to the stated goals and selected topics and activities;

5. Appropriateness of credentials/experience of participants in relation to the goals of the proposed exchange plan (including linguistic proficiency, where required);

6. Appropriateness of length of exchange visits given project goals;

7. Evidence of strong institutional commitment by participating institutions;

8. Evidence of input from foreign institution;

9. Evidence that the proposed exchanges are likely to achieve the program's overall goal of mutual institutional development;

10. Evidence of mutual advancement of cultural and political understanding of the countries or geographic areas represented in the partnership through development of individual and institutional ties;

11. Demonstration that the partnership is likely to continue after the expiration of the USIA grant;

12. If the proposal requests support for an established, active linkage, evidence that the University Affiliations funding

would allow for innovation in the exchange relationship; and

Note:—Proposals for research only will not be considered.

Agency Review Criteria

USIA reviews only those proposals recommended for further consideration by academic review panels. Agency considerations are based on:

1. USIA overseas post assessment, in terms of mutual need and feasibility;
2. Advancement of mutual cultural and political understanding between the countries or geographic areas represented in the partnership;
3. Academic quality, reflected in academic review panels' comments and recommendations;
4. Feasibility of program plan;
5. Promise of long-term impact; and
6. Cost-effectiveness.

III. Application Procedures:

Applicants must submit one original and fifteen (15) complete copies of their proposals to: University Affiliations Program 1989, United States Information Agency, 301 4th Street, SW., Room 349, Washington, DC 20547.

In order to be eligible for review, the proposal (which constitutes the program application) must include:

1. *Cover Sheet*, described under Technical Review Criteria.

2. *Summary document*, a typed project abstract, approximately two double-spaced pages.

3. *Narrative*, total text not to exceed fifteen typed, double-spaced pages, including:

- a. A brief (two-page) description of the participating institutions and participating departments;
- b. A detailed description of the proposed affiliation program including but not limited to: Names and qualifications of designated project directors; roster of program participants for both institutions (for the duration of the proposed project), their qualifications, including language skills; a statement of need for the proposed project (reflecting international, national and institutional considerations); a detailed, specific description of proposed activities, including when, where, and how they will occur, individuals who will carry out activities, departments involved; and the anticipated benefits of the program to participating institutions. A plan for institutional evaluation of the program must also be included.

4. A detailed, *three-column budget* (see sample below) outlining specific expenditures and source(s) from which funds are anticipated. *The only eligible budget items are:*

a. International airfare travel costs for participants (travel must be on U.S. air carriers where available);

b. Compensation (supplements to salary and/or benefits) or modest per diem may be requested for such specific items as housing, food and other maintenance items while in exchange status. Participating universities will be expected to continue full salary and benefits for their own faculty. The maximum amount that may be requested for compensation supplements/per diem may not exceed the rates set by the U.S. Department of State for overseas locations and the General Services Administration (GSA) per diem allowances for U.S. localities. The USIA officers listed in this announcement will supply these rates upon request.

The maximum rates described above are legal limitations only. *Institutions are encouraged, in planning their budgets, to set temporary living allowances at a lower level which can be more easily maintained after the period of USIA funding. U.S. institutions are reminded that in certain cases, restrictions may be placed on the export of salary in other currencies.*

c. Cost of educational materials (for overseas use) up to \$1,500 during the life of the grant.

Required format for budget:

All proposed expenditures should be individually listed (for the duration of the proposed project), using the format below. Each request for travel should specify round trip cost and destination for each participant per fiscal year. Each maintenance request should specify locality (city), daily rate, and duration of stay for each participant (not to exceed published Federal government rates) per fiscal year. Costs for educational materials should not exceed \$1,500 for the duration of the grant. Direct costs, in-kind or cash contributions, and applicable overhead costs absorbed by each institution should be included, along with regular salary and benefits, under the column of contributions for each partner:

	USIA	U.S. Inst.	Foreign Inst.
Year 1			
International travel.....	\$X	\$X	\$X
Maintenance costs.....	\$X	\$X	\$X
Salary and benefits.....	n/a	\$X	\$X
Educational materials.....	\$X	\$X	\$X
Direct or overhead costs (waived).....	n/a	\$X	\$X
Year 2			
International travel.....	\$X	\$X	\$X
Maintenance costs.....	\$X	\$X	\$X

	USIA	U.S. Inst.	Foreign Inst.
Salary and benefits.....	n/a	\$X	\$X
Educational materials.....	\$X	\$X	\$X
Direct or overhead costs (waived).....	n/a	\$X	\$X
Year 3			
International travel.....	\$X	\$X	\$X
Maintenance costs.....	\$X	\$X	\$X
Salary and benefits.....	n/a	\$X	\$X
Educational materials.....	\$X	\$X	\$X
Direct or overhead costs (waived).....	n/a	\$X	\$X
Totals.....	\$X	\$X	\$X

Ineligible Budget Items for USIA grant support:

- Institutional overhead, including postage, telephone or telex expenses;
- Administrative expenses incurred in connection with the affiliation;
- Expenses for student exchanges;
- Domestic travel in host country, e.g., conference attendance, travel to other institutions;
- Costs for dependents;
- Conference, seminar or publication costs;
- Insurance coverage;
- Any costs for non-U.S. citizens or nationals from the U.S. institution, or non-citizens or non-nationals of the overseas host country or locality.

5. *Appendices*, which should be kept to a minimum, must include:

- Bio-sketches* of professional accomplishments of potential U.S. and foreign participants, *not to exceed two pages in length each*, clearly indicating the level of language skills, overseas experience, knowledge of the prospective partner country or area as demonstrated through courses taught, relevant scholarly and non-scholarly travel, citizenship, publications, research/teaching activities, and professional accomplishments in field of specialization. *Lengthy academic vitae should not be submitted.*

b. *Documentation of institutional support* for the proposed affiliation, including a signed letter of endorsement from the U.S. institution's (or consortium members') *president, vice-president, chancellor or provost, director*, (for research institute), as well as a signed letter of endorsement from the *president (or equivalent)* of the non-U.S. institution. Both letters must specifically refer to the 1989 University Affiliations Program and commit participating institutions to maintaining their exchange participants on fully salary and benefits during the exchange.

N.B.: A general letter or agreement between the two institutions without reference to this specific program and its

financial requirements will not fulfill this requirement.

c. A brief summary of past and present linkages at both partner institutions.

(U.S. institutions are reminded that in certain areas, host government clearance/approval must be obtained before any exchange program of this type may be carried out. It is the responsibility of the foreign institutions to seek such approval.)

6. *Deadline*: Complete proposal packages must be received by USIA *no later than Wednesday, January 18, 1989, 5:00 p.m. EST.*

Applicants are responsible for the submission of complete applications. *All required items should be received by deadline.*

7. *Notification*: Successful applicants will be notified on or about June 16, 1989. Funded proposals will be subject to periodic reporting and evaluation requirements.

Inquiries: For questions concerning programming and budget, please contact:

Africa

Dr. Ellen Berelson (E/AEA), Academic Exchanges Division, Africa Branch, (202) 485-7355

American Republics

Ms. Paula Durbin (E/AEL), Academic Exchanges Division, American Republics Branch, (202) 485-7365

East Asia and the Pacific

Mr. Wayne Peterson (E/AEF), Academic Exchanges Division, East Asia/Pacific Branch, (202) 485-7402

Europe

Ms. Pamela Smith (E/AEE), Academic Exchanges Division, Europe Branch, (202) 485-7420

Near East/South Asia

Mr. Michael Graham (E/AEN), Academic Exchanges Division, Near East/South Asia Branch (202) 485-7368

Quincentennial Competition: Contact the relevant Academic Exchanges Branch or Branches.

General Inquiries: Dr. Winnie D. Emoungu Coordinator, University Affiliations Program Office of Academic Programs (202) 485-8489

Dated: August 5, 1988.

Mark Blitz,

Associate Director.

[FR Doc. 88-18118 Filed 8-10-88; 8:45 am]

BILLING CODE 8230-01-M

Corrections

Federal Register

Vol. 53, No. 155

Thursday, August 11, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

August 2, 1988, make the following correction:

On page 29092, in the first column, in the seventh line, "11020" should read "1020".

BILLING CODE 1505-01-D

line, "Bruce Motel" should read "Buice Motel".

BILLING CODE 1505-01-D

OFFICE OF PERSONNEL MANAGEMENT

45 CFR Part 801

Voting Rights Program

Correction

In rule document 88-18026 beginning on page 29894 in the issue of Tuesday, August 9, 1988 make the following correction:

§ 801.202 [Corrected]

Appendix A—[Corrected]

On page 29895, in the second column, in § 801.202, Appendix A, in the fifth

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Availability of the Draft Environmental Impact Statement on the Proposed Area B Expansion of the Big Sky Mine, Rosebud County, Montana (Federal Coal Lease M-15965)

Correction

In notice document 88-17358 beginning on page 29091 in the issue of Tuesday,

The first of the two main branches of the Department of the Interior is the Bureau of Land Management, which is responsible for the management of the public lands of the United States. The second branch is the Bureau of Reclamation, which is responsible for the management of the water resources of the United States.

DEPARTMENT OF THE INTERIOR

Office of the Secretary
Washington, D. C.
Bureau of Land Management
Bureau of Reclamation
Bureau of Indian Affairs
Geological Survey
United States Fish and Wildlife Service

The Department of the Interior is responsible for the management of the public lands of the United States. It is also responsible for the management of the water resources of the United States. The Department is organized into several bureaus, each of which is responsible for a specific area of the Department's work.

The Bureau of Land Management is responsible for the management of the public lands of the United States. It is also responsible for the management of the water resources of the United States. The Bureau of Reclamation is responsible for the management of the water resources of the United States.

The Bureau of Indian Affairs is responsible for the management of the Indian lands of the United States. It is also responsible for the management of the water resources of the United States. The Geological Survey is responsible for the management of the geological resources of the United States.

The United States Fish and Wildlife Service is responsible for the management of the fish and wildlife resources of the United States. It is also responsible for the management of the water resources of the United States. The Department of the Interior is responsible for the management of the public lands of the United States.

OFFICE OF PERSONNEL MANAGEMENT

1947-1948

PERSONNEL MANAGEMENT

The Office of Personnel Management is responsible for the management of the personnel of the Department of the Interior. It is also responsible for the management of the water resources of the United States. The Office of Personnel Management is organized into several divisions, each of which is responsible for a specific area of the Office's work.

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Disaster Relief

Thursday
August 11, 1988

Part II

Department of Agriculture

Farmers Home Administration

7 CFR Part 1945

Disaster Assistance and Emergency Loan Policies, Procedures and Authorizations; Final Rule

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1945

Disaster Assistance and Emergency Loan Policies, Procedures and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) adopts a portion of its proposed rule which was published on January 15, 1987 (52 FR 1706). This action is being taken to provide up to date procedures for processing disaster designations and emergency (EM) loans. This action is needed to enable FmHA to clarify its EM loan regulations and provide certain administrative guidelines to fully comply with the provisions of existing laws and regulations. The intended effect is to facilitate this action to prevent untimely delay in providing EM disaster loan assistance to eligible family farmers in disaster areas declared by the President or designated by the Secretary of Agriculture.

EFFECTIVE DATE: August 22, 1988.

FOR FURTHER INFORMATION CONTACT: Glenn J. Hertzler, Jr., Assistant Administrator, Farmer Programs, Farmers Home Administration, USDA, Room 5019, Washington, DC 20250, Telephone: (202) 447-4671.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be non-major because there is no substantial change from practices under existing rules that would have an annual effect on the economy of \$100 million or more. There is no major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographical region or significant adverse effects on competition, employment, investment, productivity, innovation, or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and

in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Discussion of the Comments

On January 15, 1987, FmHA published in the *Federal Register* (52 FR 1706) a proposed rule giving interested parties until February 17, 1987, to submit comments. On February 18, 1987, FmHA published a proposed rule in the *Federal Register* (52 FR 4913), extending the comment period to March 19, 1987, upon requests from the public. In response to the proposed rule 168 comments were received from individuals, FmHA employees, special-interest groups, United States Congressmen and State government officials. Fifty-eight of the comments were copies of very similar letters. Some of the letters covered a broad range of subjects. Generally, the comments addressed the general subject matter rather than a specific part of a regulation. Therefore, we will discuss all of the comments which are related to various subjects of this final rule action as follows:

1. Require a positive cash flow and provide guidance for determining family living expenses and a reserve for risk and uncertainties.

The proposed rule added the term "positive cash flow" with the requirement of a reserve for taxes, meeting scheduled payments on all debts, open accounts carryover debts, and a reserve for major repair costs.

The comments expressed concern over these added requirements: the proposed requirements were vague and require clarification regarding what were major repairs, reasonable standard of living, and essential capital purchases or improvements; does the proposal require a reserve for payment of next year's taxes?; FmHA borrowers are not in a strong enough financial position to maintain such reserves; capital reserves based on depreciation are not feasible for FmHA borrowers; and if borrowers could meet these additional requirements, they would not need FmHA credit.

In view of the comments, we have amended the proposed rule to require a feasible plan, rather than a positive cash flow, as defined in § 1924.57(c)(5) of Subpart B of Part 1924 of this chapter. Unlike a positive cash flow, a feasible plan shows the borrower's ability to (a) pay farm operating expenses and taxes due during the crop year; (b) meet scheduled payments on all debts, including open accounts and carryover debts; (c) provide for risk and uncertainties associated with the farming operation; and (d) provide living

expenses for the farm family or wages for an entity-type farm operator. This amendment is adopted here to provide uniformity in the FmHA Farmer Program regulations.

We believe these amendments address the major concerns of the comments on this subject.

2. Add more guidance on what is a nonfarm enterprise.

This action would further clarify which enterprises are classified as nonfarm enterprises.

One comment was received on this subject. The comment suggested that the nonfarm enterprise should be located on the farm or adjacent to the farm or be closely associated with the farming operation. Many nonfarm enterprises need a location that is readily accessible to the consumer. Often this needs to be at a location other than the farm if it is to be successful. Therefore, FmHA adopts the proposed amendment.

3. Clarify the EM disaster designation procedure.

The major concern of the comments received on this subject was that a disaster is determined on a county-wide basis rather than on an individual farm-by-farm basis. This is not true. The regulations in § 1945.6(c)(3)(iii)(C) provide that the Secretary has discretion to find that a natural disaster has occurred in a county when as few as a single farmer has suffered a severe production loss from a disaster. Therefore, FmHA does not believe any change to the proposed amendment is needed on this subject. The Federal Emergency Management Agency (FEMA) and the Small Business Administration (SBA) pointed out several discrepancies and inconsistencies in the regulations as related to their agencies and FmHA. After direct consultation with these agencies, the proposed rule was amended to correct these discrepancies and inconsistencies in the final rule.

4. Require financial information from all members of an entity and delete the references to principal members.

Presently only principal members are required to submit financial information. A principal member is identified as having either a ten percent interest or more or twenty percent interest or more in the business, depending on the type of loan program.

The proposed rule required all members of an entity to pledge all their assets for the FmHA loan. Also, the proposed rule for EM loans required the sale of non-essential assets and that all members of an entity derive more than 50 percent of their total income from the farming operation. The comments

received strongly objected to these requirements. In consideration of the comments, we have dropped the requirement of pledging all assets and the 50 percent requirement regarding farm income in this final rule. However, to strengthen the test for credit, we will require financial information from all members of the entity as prescribed in Subpart A of Part 1910 of this chapter.

5. Clarify calculations for EM actual loss loans, and prevent duplication of benefits from other agencies.

These revisions are intended to clarify the calculations for EM actual loss loans under FmHA Instruction 1945-D and to prevent duplication of disaster benefits from other Government agencies, such as the Small Business Administration (SBA).

As discussed in item number three above, FEMA and SBA pointed out several discrepancies and inconsistencies as related to their agencies and FmHA. These items are being corrected in this final rule. One comment suggested that when the normal year's production is calculated, all the years that were classified as disaster years should be eliminated from the calculation rather than just one year out of five. The comment indicated that their area had disasters for three of the last five years for peaches. We believe this is an indication that it is a high risk crop and that the disaster years are the norm for the area and that optimum yields should not be used. Therefore, we are not adopting this suggestion.

The program/activity of this action is listed in the catalog of Federal Domestic Assistance under No. 10.404.

For the reasons set forth in the final rule related to notice 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the Scope of Executive Order 12372, which requires intergovernmental consultation with the State and local officials.

The significant changes are as follows:

PART 1945—EMERGENCY

Subpart A—Disaster Assistance—General

In addition to the revisions of the proposed rule covered in item 3 under the discussion of comments, this regulation has been revised to cite new definitions of "Major Disaster" and "Presidential Emergency" declarations, provide guidelines for preventing duplication of benefits to EM borrowers by SBA and FmHA, and make editorial changes for clarification. A summary of the changes are as follows:

Section 1945.2 has been partially revised to clarify the purpose for which EM loans will be made available to eligible farmers suffering the effects of disasters.

Section 1945.5 has been made partially revised to add FAC—"Food and Agriculture Council"; change CEB (USDA County Emergency Board) and SEB (USDA State Emergency Board) to LFAC (Local Food and Agriculture Council) and SFAC (State Food and Agriculture Council), respectively; and change SRS to NASS—"State Statistical Office of the USDA National Agricultural Statistics Service."

Section 1945.6 has been partially revised to redefine "farmers," "Major disaster" and "Presidential emergency"; and to include definitions of "Primary county," "contiguous county" and "Disaster area(s)"; and to make editorial changes to the definitions of "Normal year's dollar value" and "Termination date."

Section 1945.18 has been partially revised to reflect the USDA Food and Agriculture Councils and their functions in the disaster designation process, show that ASCS State Executive Directors serve as the Vice Chairpersons for Emergency Programs of the SFACs, and to make reference to FEMA's "disaster application centers" rather than "disaster assistance centers."

Section 1945.19 has been partially revised to clarify how physical loss loans are made available by the FmHA Administrator, and to make proper references to the LFACs, SFACs and the SFAC "Vice" Chairpersons, Emergency Programs, as the sources for assessing and reporting a potential natural disaster(s).

Section 1945.20 (a)(2)(iii) has been revised to require the FmHA State Director to coordinate the issuance of all public announcements on Presidential disaster declarations with FEMA's Public Information Officer; paragraph (b)(2)(i) to make reference to SFAC "Vice" Chairperson; and paragraph (b)(2)(iii) has been revised to require the State Director to provide a list of agricultural commodities produced in the State, giving average yearly prices for three years preceding the disaster, and county average yields for five years preceding the disaster; and proper reference is made to NASS instead of SRS.

Section 1945.21 (b)(5) has been revised to show the weekly reporting requirements of County Supervisors to the FmHA State Director and to FEMA when 408 grants are made available to victims suffering damages and losses to housing and personal property in Presidential major disaster areas.

Section 1945.25 has been revised to show proper references to the SFAC "Vice" Chairperson(s) and FEMA's disaster "application" center(s); and to show that FmHA's "Report of Emergency Loans Made Pertaining to Disasters" will be provided quarterly to FEMA's National Office by the FmHA National Office.

Section 1945.26 has been partially revised to provide guidelines to prevent the duplication of FmHA and SBA disaster loan benefits; and to specify weekly rather than daily reporting to FEMA of EM applications received in Presidential disaster areas; and to submit to FEMA a copy of the final (rather than each) action taken on the EM applications. The reference to the SBA Administrator is corrected to show the Secretary of Agriculture or FmHA Administrator.

Section 1945.28 has been added setting forth the relationship between ASCS and FmHA under their respective disaster programs.

Subpart D—Emergency Loan Policies, Procedures and Authorizations

Some of the revisions to the proposed rule are covered in items 3 and 5 in the discussion of comments. Part of the introductory paragraph for § 1945.162 was inadvertently dropped in the proposed rule and is added in this final rule. This is a provision of the Food Security Act of 1985 for controlled substances. The proposed rule for § 1945.163 (b)(6)(i) through (v) was revised in the final rule published in the *Federal Register* on June 1, 1987. This revision was in regard to replacement costs for EM loan physical losses. The proposed rule for § 1945.184 is deleted from this final rule because it has been determined not to be in the best interest of the Government to make EM loans to FmHA employees. A summary of the revisions are as follows:

This regulation has been revised to remove certain provisions which are now obsolete, make editorial changes and clarify EM loan security requirements. This revised instruction includes changes for calculating quality production losses, household content losses, losses to livestock operations, and physical losses to growing crops. It also provides examples on how to calculate losses for informative purposes.

Section 1945.154 has been partially revised to include definitions for farm and home plan, household contents, feasible plan, and irregular payment; make cross reference to § 1924.57 (c)(5) of Subpart B of Part 1924 of this chapter

for definition of a feasible plan; delete definitions of farmer and principal members, stockholders, partners and joint operators; revise definitions of borrower, established farmer, farm, farming enterprise, nonfarm enterprise, partnership, physical loss, and production loss; and to change the abbreviation "EFP" to the correct abbreviation of "EFAP"—Emergency Feed Assistance Program.

Section 1945.155 has been revised to delete reference to an obsolete Memorandum of Understanding between SBA and FmHA.

Section 1945.156 has been partially revised to delete references to principals of entity applicants and establishes uses of monies from sale of non-essential assets.

Section 1945.161 has been partially revised to make editorial changes, and to delete references to principals of entity applicants and the enumerated information required from entity applicants and members of entity applicants.

Section 1945.162 has been partially revised to delete "principal" and clarify the eligibility requirements for an "established farmer" in paragraph (c), change paragraph (g) to coincide with the training and experience requirements of other farm loan regulations, correct the cross-reference of the definition of a "family farm" in paragraph (i), make editorial changes in paragraph (1), and to add paragraph (m).

Section 1945.163 has been partially revised to clarify and renumber paragraphs (a)(1) (i) through (v) to (a)(1) (i) through (iv) to set forth the sources of production records which may be used in sequential order to calculate the applicant's normal yields; provide guidelines and examples on calculation of production losses in paragraph (a)(2); provide guidelines and examples for calculation of replacement cost to essential machinery, equipment and buildings in paragraphs (b)(5), (7) and (8); allow applicants with dwelling losses only the option to apply for either an EM loan or SBA disaster housing loans in paragraph (b)(14); provide guidelines for determining household content losses in paragraph (c); and editorial changes are made in paragraphs (d) and (e).

Section 1945.166 has been partially revised to clarify paragraph (a)(2) and to reduce and clarify the number of purposes for which EM funds may be used in paragraphs (b) and (c).

Section 1945.167 has been partially revised to add paragraphs (b), (j) and (k) and renumber the existing paragraphs accordingly. Paragraph (b) is added to show that priority will be given to the

use of EM loan funds to meet the credit needs of FO, OL and SW farm loan applicants; paragraph (f) is revised to reduce the period from 2 years to 1 year for requiring a new appraisal; paragraphs (j) and (k) are added to provide guidelines on how to handle applicants previously indebted to FmHA, and to preclude the making of EM loans on highly erodible land and wetland.

Section 1945.168 has been partially revised in paragraph (b) to stipulate the maximum repayment terms for EM loans based on production and physical losses; to clarify the terms of EM loans advanced for crop and livestock production in paragraphs (b)(1) (ii) and (iii); to delete paragraph (b)(3); and to correct a line omission in paragraph (d).

Section 1945.169 has been partially revised to delete paragraph (a)(3) and to add a new paragraph (a)(3) to allow a junior lien on collateral which secures a guaranteed FmHA loan(s) when an EM loan is being made to an indebted FmHA borrower; paragraph (b) is revised to show the parties responsible for signing the promissory note when an EM loan is made to an individual or entity; a new paragraph (i) is added to prescribe the type of security required when EM loans are made for personal household contents; and the remaining paragraphs are renumbered in sequence with some editorial changes. Paragraph (n) is revised to show that crop insurance is optional and not a requirement for an EM loan(s).

Section 1945.173 (b)(1)(ii) has been partially revised to delete references to continue, through providing additional EM loans, with borrowers who have defaulted on loan agreements by allowing flood or mudslide insurance to lapse and have had new flood or mudslide losses.

Section 1945.180 has been revised to delete paragraphs (a) and (b) and to show in the introductory paragraph a cross-reference to § 1910.4(f) of Subpart A of Part 1910, as the procedures to follow in timely processing of EM applications and County Committee actions.

Section 1945.183 has been partially revised in paragraph (a) to clarify FmHA's relationship with SBA in handling EM applications for disaster housing purposes, and allow weekly instead of daily reports to SBA on all such EM applications received, followed with a copy of the final action taken on the applications, so as to prevent a duplication of benefits; and make certain editorial changes; paragraph (b) is revised to further define the administrative actions to be taken before approving an EM loan(s); and

paragraphs (c), (d) and (e) are revised to make editorial changes and to show the process by which County Supervisors will report rejected applicants for EM disaster housing assistance to FEMA.

List of Subjects in 7 CFR Part 1945

Agriculture, Disaster assistance, Intergovernmental relations, Loan programs—Agriculture.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations is amended to read as follows:

PART 1945—EMERGENCY

1. The authority citation for Part 1945 is added to read as follows and the authority citations throughout Part 1945 are removed.

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

2. Subpart A is revised to read as follows:

Subpart A—Disaster Assistance—General

- Sec.
- 1945.1 [Reserved]
 - 1945.2 Purpose.
 - 1945.3–1945.4 [Reserved]
 - 1945.5 Abbreviations.
 - 1945.6 Definitions.
 - 1945.7–1945.17 [Reserved]
 - 1945.18 United States Department of Agriculture (USDA) Food and Agriculture Council (FAC).
 - 1945.19 Reporting potential natural disasters and initial actions.
 - 1945.20 Making EM loans available.
 - 1945.21 Reporting and coordination requirements.
 - 1945.22–1945.24 [Reserved]
 - 1945.25 Relationship between FmHA and FEMA.
 - 1945.26 Relationship between FmHA and SBA.
 - 1945.27 Relationship between FCIC and FmHA.
 - 1945.28 Relationship between ASCS and FmHA.
 - 1945.29 [Reserved]
 - 1945.30 FmHA Emergency Loan Support Teams (ELST).
 - 1945.31 FmHA Emergency Loan Assessment Teams (ELAT).
 - 1945.32–1945.34 [Reserved]
 - 1945.35 Special EM loan training.
 - 1945.36–1945.44 [Reserved]
 - 1945.45 Public information function.
 - 1945.46–1945.50 [Reserved]

Subpart A—Disaster Assistance—General

§ 1945.1 [Reserved]

§ 1945.2 Purpose.

This subpart describes and explains the types of incidents which can result in an area being determined a disaster area, thereby making qualified farmers in such areas eligible for Farmers Home

Administration (FmHA) Emergency (EM) loans. With respect to natural disasters, it sets forth the responsibility of the Secretary of Agriculture; the factors used in making a natural disaster determination; the relationship between FmHA and the Federal Emergency Management Agency (FEMA); the method for establishing and using Emergency Loan Support Teams (ELST) and Emergency Loan Assessment Teams (ELAT); the training of FmHA personnel; and disaster related public information functions. The natural disaster determinations/notifications made under this subpart do not apply to any program other than the FmHA EM loan program. FmHA's policy is to make EM loans to any otherwise qualified applicant without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap (provided the applicant can execute a legal contract) as provided by law.

§§ 1945.3-1945.4 [Reserved]

§ 1945.5 Abbreviations.

The following abbreviations are used in this subpart.

(a) ASCS—Agricultural Stabilization and Conservation Service.

(b) DAR—Damage Assessment Report.

(c) ELAT—Emergency Loan Assessment Team.

(d) ELST—Emergency Loan Support Team.

(e) EM—Emergency.

(f) EOH—USDA Emergency Operations Handbook.

(g) FAC—Food and Agriculture Council.

(h) FCIC—Federal Crop Insurance Corporation.

(i) FCO—Federal Coordinating Officer.

(j) FEMA—Federal Emergency Management Agency.

(k) FmHA—Farmers Home Administration.

(l) LFAC—Local Food and Agriculture Council.

(m) NASS—State Statistical Office of the USDA National Agricultural Statistics Service.

(n) OMB—Office of Management and Budget.

(o) SBA—Small Business Administration.

(p) SFAC—USDA State Food and Agriculture Council.

(q) USDA—United States Department of Agriculture.

§ 1945.6 Definitions.

The following definitions are applicable to this subpart:

(a) *Applicant*. The person or entity carrying on the farming operation at the

time of the disaster and requesting EM loan assistance from FmHA.

(b) *County*. A local administrative subdivision of a State or a similar political subdivision of the United States.

(1) *Primary county*. A county determined to be a disaster area.

(2) *Contiguous county*. A county that touches a primary county at any point.

(c) *Disaster*. A natural disaster, as determined by the Secretary of Agriculture or the FmHA Administrator, or a major disaster or emergency declared by the President.

(1) *Major disaster*. Any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under the "Disaster Relief Act of 1974," above and beyond normal emergency services available from Federal, State and local governments.

(2) *Presidential emergency*. Any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which is of such magnitude that the President makes a declaration requiring Federal emergency assistance to supplement State and local efforts to save lives and protect property, public health and safety, or to avert or lessen the threat of a disaster.

(3) *Natural disaster*. A disaster in any part of the United States in which unusual and adverse weather conditions or other natural phenomena have substantially affected farmers by causing severe physical property losses and/or severe production losses within a county. Except where otherwise specified, the use of the term county or similar political subdivision is for administrative purposes only.

(i) Unusual and adverse weather conditions or natural phenomena include such things as:

(A) A major single natural occurrence or event such as a blizzard, cyclone, earthquake, hurricane or tornado.

(B) A single storm, or series of storms, accompanied by severe hail, excessive rain, heavy snow, ice and/or high wind.

(C) An electrical storm.

(D) A severe weather pattern over a period of time which, due to excessive rainfall, unusual lack of rainfall, or periods of high or low temperatures, causes flooding, substantial water

damage, drought or freezing, or which results in the spreading and flourishing of insects or pests, or in plant or animal diseases spreading into epidemic proportions, or prevents the control of fire, however caused.

(ii) Severe *physical* property losses are those which the Administrator determines prior to a natural disaster determination by the Secretary, to be severe, and to have caused extensive damage to or destruction of, physical farm property including farmland (except sheet erosion); structures on the land such as buildings, fences, dams, etc.; machinery, equipment, and tools; livestock, livestock products; poultry; poultry products; growing crops (see § 1945.163(b)(11) of Subpart D of Part 1945 of this chapter); harvested crops, and supplies which, if not repaired or replaced, would make it impossible for farmers affected by the unusual and adverse weather conditions to continue operating their farms on a sound basis.

(iii) Severe *production* losses within a county are those in which either:

(A) The Secretary determines that there has been a reduction countywide of at least 30 percent of the normal year's dollar value of all crops, including hay and pasture, and the crops could not be replanted or replaced with a substitute crop, or

(B) The Secretary determines that there has been a 30 percent loss countywide in the normal year's dollar value of a single enterprise (as defined in § 1945.154(a)(13)(i) of Subpart D of Part 1945 of this chapter); or

(C) The Secretary, after exercising discretion, determines that, although the conditions set forth in § 1945.6(c)(3)(iii)(A) and (B) of this subpart have not been met, the unusual and adverse weather conditions or natural phenomena have resulted in such significant production losses, or have produced such extenuating circumstances as to warrant a finding that a natural disaster has occurred. In making this determination, the Secretary may request the Administrator to provide for consideration such factors as the nature and extent of production losses; the number of farmers who have sustained qualifying production losses; the number of farmers in that other lenders in the county indicate they will not be in position to finance; whether the losses will cause undue hardship to a certain segment of farmers in the county; whether damage to particular crops has resulted in undue hardship; whether other Federal and/or State benefit programs, which are being made available due to the same disaster, will consequently lessen undue hardship and

the demand for EM loans; and any other factors considered relevant. The Secretary will consider the information set forth in § 1945.6(i) of this subpart in deciding whether a natural disaster has occurred.

(4) *Potential natural disaster.* Unusual and adverse weather conditions or natural phenomena that have caused physical and/or production losses, but which have not yet been examined by the Secretary or the Administrator for consideration as a natural disaster.

(d) *Disaster area(s).* The county(ies) declared/designated as a disaster area for EM loan assistance as a result of disaster related losses. This included counties named as contiguous to those counties declared/designated as disaster areas.

(e) *Farmers.* Individuals, cooperatives, corporations, partnerships or joint operations who are farmers, ranchers, or aquaculture operators actively engaged in their operation at the time a disaster occurs.

(f) *Incidence period.* The specific date or dates during which a disaster occurred.

(g) *National Office.* The Director, Emergency Designation Staff.

(h) *Normal year's dollar value.* The FmHA National Office will determine the normal year's dollar value by establishing a normal year yield and price. Normal year yield will be the average yield of the 5 years immediately preceding the disaster year for each cash crop, including hay and pasture, grown in the county. The price will be the average commodity price for the 36 months immediately preceding the disaster year for each crop. Yields and prices used to establish the value or normal production will be obtained from the NASS. In cases where crops produced and/or prices are not available from NASS, the information will be obtained from other reliable sources. Yields used to establish the disaster year's production will be obtained from DARS which are prepared by the LFACs and SFACs. Prices used to establish the value of disaster year production will be the same as those used to establish normal year values.

(i) *Substantially affected.* A farmer applicant has been substantially affected when there has been a disaster as defined in paragraph (c) of this section, and the applicant has sustained qualifying physical and/or production losses, as defined in § 1945.154(a) of Subpart D of Part 1945 of this chapter.

(j) *Termination date.* The date specified in a disaster declaration/termination/notification which establishes the final date after which EM loan applications can no longer be

accepted. For both physical and production losses, the termination date will be 8 months from the date of the disaster declaration/determination/notification.

(k) *United States or State.* Each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§§ 1945.7-1945.17 [Reserved]

§ 1945.18 United States Department of Agriculture (USDA) Food and Agriculture Council (FAC).

There is a USDA FAC established by the Secretary to serve every State and every County in the United States. The FACs are responsible for reporting the occurrence of and assessing the damage caused by potential disasters, as required to ensure that the Department's disaster programs are implemented when and where needed; to coordinate the Department's EM disaster programs with those of other Federal departments and agencies; and to provide personnel, as needed and requested by FEMA, to help staff disaster application centers in major disaster areas.

(a) *State Food and Agriculture Council (SFAC).* The SFACs are composed of representatives of the several USDA agencies having emergency program responsibilities at the State level. The vice chairpersons, Emergency Programs, of the SFACs are the ASCS State Executive Directors. FmHA State Directors are members of the SFACs.

(b) *Local Food and Agriculture Council (LFAC).* These councils are composed of representatives of the several USDA agencies having available personnel at the County level. The chairpersons of the LFACs, in most cases, are the ASCS County Executive Directors. The FmHA County Supervisors are members of the LFACs.

(c) *FAC policies and procedures.* These policies and procedures are set forth in the USDA Emergency Operations Handbook (EOH), available in any ASCS or FmHA Office.

§ 1945.19 Reporting potential natural disasters and initial actions.

(a) *Purpose.* The purpose of reporting potential natural disasters is to provide a systematic procedure for rapid reporting of the occurrence and extent of damage and loss caused by such events which may result in a natural disaster determination.

(b) *Responsibility for assessing and reporting disasters.* USDA SFACs and LFACs representing their members agencies are best qualified at the State

and County levels to accomplish the assessment of agricultural production losses resulting from a potential natural disaster. These councils are charged with the responsibility of reporting the occurrence of and assessing the damage caused by disasters and will perform this responsibility under policies and procedures as set forth in the EOH.

(c) *Actions to be taken.* Immediately after the occurrence of a potential natural disaster:

(1) When physical losses only occur, the FmHA County Supervisor will report to the State Director who will advise the Administrator that there has been a potential natural disaster with physical property losses to one or more farmers. *This report must be made to the Administrator within 3 months from the last day of the disaster incidence period. Upon receiving the report, the Administrator will decide whether a natural disaster has occurred. If it has, the Administrator will make EM loans available to any otherwise qualified applicant who has suffered qualifying physical losses. Availability of EM loans assistance under this Administrator action shall be limited to physical losses only.* Notices that EM loans are available will identify the county in which the unusual and adverse weather condition, or natural phenomenon has occurred and also each contiguous county.

(2) When physical and/or production losses occur, the FmHA County Supervisor will report to the LFAC chairperson, as specified in the EOH, all substantial physical property loss, damage or injury and severe production losses that have occurred in the County Office area. The County Supervisor will assist the LFAC in preparing the 24-hour report required in paragraph (c)(3) of this section. If the LFAC has not completed its 24 hour report within two workdays after the occurrence of a potential natural disaster, the County Supervisor will report to the State Director of Form FmHA 1945-27, "Report of Natural Disaster." In urgent situations, the report may be made by telephone, followed by the LFAC report or Form FmHA 1945-27. Either of these reports will be based on information obtained from personal knowledge and from farmers, agricultural and community leaders, and from any other personally contacted reliable source(s). The County Supervisor will convey to the LFAC chairperson all information pertaining to the potential disaster and provide the chairperson with a copy of Form FmHA 1945-27, if prepared.

(3) The LFAC will report the potential natural disaster, in accordance with the EOH, to:

- (i) The SFAC, Vice Chairperson; and
- (ii) Appropriate County Government representative(s).

(4) The SFAC will provide copies of the LFAC report to:

- (i) The USDA Washington Offices of ASCS, FmHA and Office of Intergovernmental Affairs; and
- (ii) The State Governor's Emergency Coordinator and the State Department of Agriculture.

(5) The FmHA State Director will inform the National Office of each potential natural disaster as soon as possible and forward to the National Office a copy of the LFAC report or Form FmHA 1945-27, with any attachments, and supplemented with the State Director's comments and recommendations. The State Director must include a statement as to the number of farmers, ranchers, and aquaculture operators affected by the potential natural disaster. In urgent situations, the State Director will report to the National Office, Emergency Designation Staff, by telephone, and immediately thereafter send a written report to the National Office, Emergency Designation Staff. The State Director will continually notify the SFAC Vice Chairperson, Emergency Programs, of any additional information received concerning the potential natural disaster.

(6) When inquiries are received from persons affected by a potential natural disaster, they will be provided the following information:

- (i) By the County Office:
 - (A) The kind of assistance that will be available if the President declares a major disaster or emergency, or if the Secretary determines that a natural disaster has occurred.

(B) Whether or not physical property loss EM loans are available.

(C) That applications for EM loans may be filed for future processing if such loans are made available, or may be filed at a later date after the necessary determinations have been made.

(D) Whether regular FmHA farm loan assistance is available.

(ii) State Office, or the National Office, will furnish the same information as the County Office, or will refer the person to the appropriate County Office.

(7) When inquiries are received from a Governor, a County Governing Body or Indian Tribal Council concerning a potential natural disaster, they will be informed of the procedure for making EM loans available.

(8) The actions required in paragraph (b) of this section will be taken even if

the Governor of a State has requested the President to declare a county(ies) a major disaster or Presidential emergency area.

§ 1945.20 Making EM loans available.

EM loans will be made available to applicants having qualifying severe physical and/or production losses within a county named by FEMA as eligible for Federal assistance under a major disaster or emergency declaration by the President; or under a natural disaster determination by the Secretary of Agriculture, pursuant to § 1945.6(c)(3)(iii) of this subpart; and to applicants having qualifying severe physical property losses when, prior to action by the President or the Secretary, the FmHA Administrator has determined (pursuant to § 1945.6(c)(3)(ii) of this subpart) that such losses have occurred as a result of a natural disaster. Any determination made by the Secretary or the Administrator, pursuant to this subpart may be revised or reversed upon the receipt of new facts which establish that a change is warranted. FmHA's policy is to make loans to any otherwise qualified applicant. When a county has been designated/declared a disaster area where eligible farmers may qualify for EM loans due to a disaster(s) occurring on or after May 31, 1983, under this section, all other counties contiguous to the eligible county(ies) are also named as areas where EM actual loss loans may be made to applicants whose operations have been substantially affected by the same disaster(s).

(a) *Declaration by the President.* When there is a Presidential major disaster or emergency declaration and FEMA has notified the FmHA National Office, the following actions will be taken:

(1) The National Office will immediately:

(i) Notify the State Director and the Director, Finance Office by telephone and confirm by electronic message. The notification will contain:

(A) The date of the declaration;

(B) The name(s) of the county(ies) determined eligible for Federal disaster assistance;

(C) The type of disaster;

(D) The incidence period for the disaster;

(E) The termination date for accepting applications; and

(F) The disaster declaration number [Examples: Major Disasters, M491; or Presidential Emergency, E061].

(ii) Take the actions required by § 1945.21(a)(1) of this subpart.

(2) The State Director will immediately:

(i) Notify the appropriate County Supervisor(s) to make EM loans available in the declared counties, and confirm this notification by a State supplement containing information listed in paragraphs (a)(1)(i) (A) through (F) of this section.

(ii) Notify the SFAC Vice Chairperson, Emergency Programs, in writing; and

(iii) Prepare the public announcements deemed appropriate to inform the farm community, and coordinate the issuance of such announcements with FEMA's Public Information Officer.

(3) The County Supervisor will immediately upon receiving notification that the county(ies) has been declared a disaster area:

(i) Notify the Chairperson LFAC in writing;

(ii) Make such public announcements as seem appropriate to adequately inform the local farm community;

(iii) Arrange and conduct meetings with local agricultural lenders and agricultural leaders within 10 working days after the disaster declaration date to explain the purpose and the assistance available under the EM loan program; and

(iv) Be available to help staff the FEMA disaster assistance centers, when requested to do so.

(b) *Determination by the Secretary of Agriculture.* When a potential disaster has substantially affected farmers, causing qualifying severe losses and it is requested by a Governor or Indian Tribal Council that there be a determination that a natural disaster has occurred, the Secretary will acknowledge the request in writing and consider whether a determination should be made, provided the Secretary receives such request in writing within three months of the last day of the occurrence of such potential disaster.

The Governor or Indian Tribal Council should send a copy of the request to the FmHA State Director. When the Secretary finds based on the material received pursuant to this subpart that the conditions of § 1945.6(c)(3)(iii) (A) or (B) have been met, it shall be announced that a natural disaster has occurred. Also, if on finding that the conditions of § 1945.6(c)(3)(iii)(C) of this subpart so warrant, the Secretary may determine that a natural disaster has occurred.

(1) Upon receipt of the Governor's or Indian Tribal Council's request through the Secretary's Office, the FmHA National Office will immediately take the following actions:

(i) Notify the State Director by telephone of the Governor's request.

(ii) Obtain an immediate report from the State Director on whether there have

been severe physical property losses within each of the counties requested by the Governor or Indian Tribal Council.

(iii) Obtain a report from the State Director on production losses.

(2) The State Director will immediately:

(i) Notify the SFAC Vice Chairperson, Emergency Programs, that a DAR is needed, unless the Governor has already made such request to the SFAC Vice Chairperson, in accordance with the EOH for the requested county(ies); and

(ii) Advise the National Office on whether qualifying physical property losses have occurred.

(iii) Review each DAR, as soon as it is available, and forward it to the National Office with written comments on the extent of probable qualifying production losses, and other factors which are recommended for consideration by the Secretary in making determinations under § 1945.6(c)(3) of this subpart. The State Director will also submit to the National Office a list of all agricultural commodities produced in the State, giving the average yearly prices for each commodity for the three years immediately preceding the disaster year; the county average yields for each commodity for the five years immediately preceding the disaster year; and any additional supportive information. Yields and prices data will be used to establish the normal year's production and will be obtained from the USDA National Agricultural Statistics Service (NASS) by the State Director. In cases where crops produced and/or prices are not available from NASS, the information will be obtained from other reliable sources.

(iv) Upon receipt of the Administrator's request for a survey in connection with a request by the Secretary for information needed concerning § 1945.6(c)(3)(iii)(C), expeditiously gather and compile the information requested and submit it to the Administrator with a recommendation. The survey will be conducted in a manner jointly agreed upon by the Administrator and the State Director.

(3) The National Office will:

(i) Immediately use the State Director's report and accompanying price and yield information to analyze and verify losses reported in the DAR(s), along with any other information and comments provided by the State Director.

(ii) Promptly forward a written report to the Secretary, along with supporting information, for use by the Secretary in making a decision on the requested natural disaster determination.

(4) The Secretary will review the results of the survey and determine whether a natural disaster has occurred.

(i) When the Secretary determines that a natural disaster has occurred:

(A) The Administrator will be directed to make EM loans available in the county(ies) named by the Secretary, as provided by law.

(B) The Administrator will notify the State Director, by electronic message, of the Secretary's decision. Such notice will not be given to the State Director until the Secretary has notified the Governor or Indian Tribal Council, from whom the natural disaster determination request was received.

(C) The National Office will immediately pursue the same course of action as described in paragraph (a)(1) of this section, except the disaster determination number will be coded S and three numbers (Example S141).

(D) The State Director will immediately pursue the same course of action as described in paragraph (a)(2) of this section.

(E) The County Supervisor will immediately pursue the same course of action as described in paragraph (a)(3) of this section.

(ii) When the Secretary determines that the conditions in § 1945.6(c)(3)(iii)(A) or (B) of this subpart have not been met, and decides to consider other factors in accordance with § 1945.6(c)(3)(iii)(C) of this subpart, the Secretary will:

(A) Request the Administrator to provide additional information for consideration through an actual survey of farmers and lending institutions in the county(ies) requested to be determined a natural disaster area.

(B) The Administrator will instruct the State Director to conduct the survey focusing on such factors as:

(1) The nature and extent of production losses;

(2) The number of farmers who have sustained qualifying production losses;

(3) The number of farmers in paragraph (b)(4)(ii)(B)(2) of this section that other lenders in the County Office area indicate they will not be in a position to finance;

(4) Whether the losses will cause undue hardship to a certain segment of farmers in the county;

(5) Whether damage to particular crops has resulted in undue hardship;

(6) Whether other Federal and/or State benefit programs, which are being made available due to the same disaster, will consequently lessen undue hardship and the demand for EM loans; and

(7) Any other factors considered relevant.

(iii) If the Secretary finds that the conditions of § 1945.6(c)(3)(iii)(A) or (B) of this subpart have not been met, and decides that the conditions do not warrant a natural disaster finding under § 1945.6(c)(3)(iii)(C) of this subpart, the Governor or Indian Tribal Council and other concerned officials will be notified of this and the reason(s) for the Secretary's conclusions.

(c) *Notification by the FmHA Administrator.* When the Administrator determines that an unusual and adverse weather condition or natural phenomenon has substantially affected farmers, causing qualifying severe physical losses, the Administrator will make EM physical loss loans available in the county(ies) identified and notify the State Director by electronic message.

(1) The Administrator, upon notifying the State Director that EM physical loss loans are to be made available, will issue the following:

(i) The Administrator's notification number (Example: N181);

(ii) The incidence period for the natural disaster; and

(iii) The termination date for accepting applications.

(2) The State Director upon receiving written notification by electronic message from the Administrator will notify:

(i) Appropriate County Supervisor(s) to commence processing EM loan applications in appropriate county(ies).

(ii) The SFAC Vice Chairperson, Emergency Programs; and

(iii) The news media with appropriate announcements.

(3) The Administrator will notify the Office of the Secretary of Agriculture of any action taken concerning physical property losses. The National Office will also provide the same information to the appropriate Governor or Indian Tribal Council, FEMA, ASCS, SBA and other concerned officials at their request.

(4) Upon notification from the State Director that EM loans are available in a county, the County Supervisor will pursue the course of action described in § 1945.20(a)(3) of this subpart.

(d) *Relationship between Administrator's notification and Secretary's determination.* Both the Administrator and the Secretary can make natural disaster determinations affecting the same county:

(1) When the Administrator has made physical loss loans available pursuant to § 1945.6(c)(3)(ii), and the Secretary later makes production loss loans available pursuant to § 1945.6(c)(3)(iii) on the basis of the same unusual and adverse weather condition or natural

phenomenon, such physical and production losses will be considered to be caused by a single natural disaster. Any physical loss loans made pursuant to the Administrator's earlier notification will be included in the maximum amount available to an applicant as prescribed in § 1945.163(e) of Subpart D of Part 1945 of this chapter.

(2) When a series of unusual and adverse weather conditions or natural phenomena occur in a county within the same crop year, and it is not possible for the Secretary to assess the damages in order to determine whether the conditions in § 1945.6(c)(3)(iii) have been met until the end of such series or the crop year, a determination that a natural disaster has occurred shall be considered for both physical property and production losses to be due to a single natural disaster. Any physical loss loans made pursuant to the Administrator's earlier notification will be included in the maximum amount available to an applicant as prescribed in § 1945.163(e) of Subpart D of Part 1945 of this chapter.

(e) *Extension of termination dates for continuing disaster conditions.* When a natural disaster continues beyond the date on which an Administrator's notification or Secretary's determination is made, and when there are continuing losses or damages caused by that disaster, the Administrator will extend the incidence period and the termination date for such specified period as the Administrator finds appropriate, but not in excess of 60 days. The following actions will be taken to obtain an extension:

(1) The County Supervisor will advise the State Director of the conditions for which an extension is requested.

(2) The State Director will make a recommendation to the Administrator on whether an extension should be granted; and

(3) The Administrator will, if the request is granted:

(i) Amend the initial notification/determination (using the same number) by establishing a new incidence period and termination date; and

(ii) Notify the State Director by electronic message.

(f) *Limitations.* When actions are authorized by the Secretary or the Administrator under paragraphs (b) or (c) of this section, such actions will ordinarily be completed within six months after the beginning date of the incidence period of a reported disaster, except when the actions required in paragraph (b)(2) of this section cause a delay beyond the six months period, in which event the actions must be completed within nine months of the

beginning date of the incidence period. The Secretary may extend this limitation up to 12 months from the beginning date of the incidence period if there were other exceptional causes for the delay.

§ 1945.21 Reporting and coordination requirements.

After EM loans are made available under § 1945.20 of this subpart, the following actions will be taken immediately:

(a) *By the National Office.* The Administrator or a designee will:

(1) Submit weekly reports to the following, informing them of the past week's disaster actions taken by FmHA. If no actions are taken in any particular week, negative reports will be made:

(i) The Secretary of Agriculture or the Secretary's designee;

(ii) The Director of the FmHA Finance Office;

(iii) The FEMA;

(iv) The SBA Central Office;

(v) The ASCS National Office;

(vi) The FCIC National Office;

(vii) The OMB;

(viii) The National Oceanic and Atmospheric Administration; and

(ix) The Office of Governmental and Public Affairs.

(2) The weekly reports will contain the following information:

(i) The date of the declaration/determination/notification;

(ii) The name(s) of any county(ies) in which EM loans are available;

(iii) The nature of the damages and losses; and

(iv) The termination data for accepting EM loan applications.

(b) *By the State Director.*

(1) Notify the appropriate County Supervisor(s) of the:

(i) Name(s) of any county(ies) in which EM loans are available;

(ii) Date of the declaration/determination/notification;

(iii) Disaster number;

(iv) Type of disaster;

(v) Incidence period; and

(vi) Termination date for accepting applications.

(2) Notify the State ASCS Executive Director of the authority to make EM loans. Promptly have a meeting to review and implement the provisions of the Memorandum of Understanding between ASCS and FmHA on Disaster Assistance, Exhibit A of FmHA Instruction 2000-JJ (available in any FmHA office). Arrive at a mutual understanding as to how ASCS disaster program benefits are to be handled in conjunction with the processing of FmHA EM actual loss loans, so that duplication of benefits for the same

losses are not received by disaster victims;

(3) Contact the FCIC Field Operations Office Director to review the Memorandum of Understanding between FCIC and FmHA, Exhibit A of FmHA Instruction 2000-N (available in any FmHA office), and arrive at a mutual understanding as to how FCIC indemnity payments are to be handled in conjunction with the processing of EM actual loss loans so that duplication of benefits for the same losses are not received by disaster victims;

(4) Make appropriate public announcements, including notices in Indian Tribal Council(s) news media. However, if the declaration was by the President, under § 1945.20(a) of this subpart, news releases should be cleared with the FEMA; and

(5) If the FEMA notifies the State Director that an agreement between the State and Federal Government (FEMA) has been made to provide 408 grants in a major disaster area to those suffering damages and losses to housing and personal property, who are ineligible for disaster loan assistance through the FmHA and/or SBA, the following actions will be taken:

(i) The State Director will notify the appropriate County Supervisor(s) of the address and phone number of the nearest FEMA office in the Supervisor's area; and

(ii) At the close of business each week, the County Supervisor(s) will forward to the State Director a list of applicants claiming physical losses who do not qualify for EM loan assistance, with the reason(s) they do not qualify; and

(iii) The State Director will immediately summarize the information received from the County Supervisors and forward a report to FEMA.

(c) *By the County Supervisor.* (1) Notify the County ASCS Executive Director of the declaration/determination/notification and have a meeting to review and implement the provisions of the Memorandum of Understanding between ASCS and FmHA on Disaster Assistance, Exhibit A of FmHA Instruction 2000-JJ (available in any FmHA office), to arrive at a mutual understanding as to how ASCS disaster program benefits and other information in ASCS's records will be made available and used in processing EM actual loss loans. Also, the County Supervisor will request that information regarding the availability of EM loans be placed in the ASCS's newsletter;

(2) Notify the County Governing Body, Indian Tribal Council(s), and make

appropriate public announcements including notices in Indian Tribal Council(s) news media; and

(3) Explain the assistance available under the EM program to agricultural lenders and leaders in the area including Indian agricultural lenders and leaders.

§§ 1945.22-1945.24 [Reserved]

§ 1945.25 Relationship between FmHA and FEMA.

(a) *General.* When a major disaster or emergency declaration is made by the President, the FEMA is charged with the responsibility for seeing that disaster assistance is made available to disaster victims. Also, FEMA is responsible for coordinating the actions of other Federal agencies who have programs to provide disaster assistance. A Federal Coordinating Officer (FCO) is appointed for each major disaster or emergency to coordinate Federal assistance in the disaster area.

(b) *Before the declaration.* (1) When a request for a major disaster or emergency declaration is made by the Governor of a State, the FEMA through its Regional Director is responsible for obtaining an assessment of the losses and damages to respond to the request.

(2) If the FEMA makes a request for information from FmHA on losses and damages caused by an unusual and adverse weather condition or natural phenomenon, the FEMA representative will be advised to contact the SFAC Vice Chairperson. The EOH provides that the SFAC will request the LFAC to prepare the DAR. State Directors and County Supervisors should cooperate with the SFAC Vice Chairpersons and LFAC Chairpersons in preparing the DARs.

(c) *After the declaration.* When a major disaster has been declared by the President and the FEMA establishes a disaster application center(s) in the local disaster area(s):

(1) The SFAC will be responsible for:

(i) Selecting qualified USDA employees to represent USDA at each center, after consulting with other council members in making the selection. FmHA State Directors will cooperate with the SFAC in seeing that centers are properly staffed.

(ii) Orienting the selected employees on all current USDA disaster programs. FmHA State Directors will cooperate in this orientation to ensure that the USDA representatives at the center(s) are familiarized with the FmHA EM loan program and other FmHA loan programs that could be of assistance to the disaster victims; and

(iii) Informing the FEMA that USDA representatives are available to help at each of the disaster application centers.

(2) The FmHA State Director will be responsible for pursuing the following policy in working with the FEMA and the FCO by:

(i) Authorizing receipt of EM loan applications in the counties named by the FEMA. However, no EM loans can be approved until the National Office has given such notification as prescribed in § 1945.20(a)(1) of this subpart;

(ii) Attending or delegating a representative to attend any meeting(s) called by the FCO to discuss Federal assistance under the disaster declaration; and

(iii) Advising the FCO to contact the SFAC Vice Chairperson, if a request is made by the FCO for FmHA employees to help staff the FEMA's Disaster Application Centers; and

(iv) Advising the FCO that FmHA's "Report of Emergency Loans Made Pertaining to Disasters" will be provided quarterly to FEMA's National Office by the FmHA National Office.

§ 1945.26 Relationship between FmHA and SBA.

(a) *General.* Public Law 99-272 made agricultural enterprises ineligible for SBA physical disaster and economic injury loan programs. However, in disaster areas declared by the President or the SBA Administrator, the SBA will continue to accept physical disaster loan applications for losses to dwellings and/or personal household contents, regardless of whether the dwelling is located on a farm or nonfarm tract. It is the policy of USDA and FmHA to cooperate with SBA in the use of each agency's respective loan making authorities, to complement the activities of each other; and to the extent possible, improve the delivery of disaster assistance to the agricultural segment of the country and minimize the potential for duplication of benefits for the same losses from the disaster loan programs administered by the two agencies.

(b) *Preventing duplication of disaster program benefits.* Preventing borrowers from receiving duplicate disaster program benefits will be assured by taking the following precautions:

(1) For all counties named by FEMA under a major disaster or Presidential emergency declaration, the FmHA County Offices will notify the appropriate SBA Disaster Area Office of all EM loan applications received each week, for damage or loss of farm dwellings and/or loss of household contents. Notice will be given by forwarding to SBA a photocopy of the applicant's completed Form FmHA 410-

1, "Application for FmHA Services." Block 22 of the form should indicate the purpose for which the loan was requested.

(2) For each application referred to in paragraph (b)(1) of this section, FmHA County Offices will send a copy of each final action taken with EM loan applications to the appropriate SBA Disaster Area Office.

(3) A farm applicant may elect to obtain SBA financing for physical damage or loss to the dwelling and household contents, and separate financing from FmHA to cover damages or losses to the farming operation. Accordingly, applicants who elect to receive SBA physical disaster loans for dwelling and/or household content losses may also file for FmHA EM loan assistance in disaster areas declared by the President or the Secretary of Agriculture or FmHA Administrator. An EM loan will *not* be approved until it is determined the requirements of § 1945.163(d) of Subpart D of this part will be met. When an EM loan is approved, the FmHA County Office will notify the SBA Disaster Area Office, pursuant to paragraph (a)(4)(ii) of § 1945.183 of Subpart D of this part.

(c) *How SBA disaster loans are made available.* SBA disaster loans are available in counties:

(1) Named by the FEMA under a major disaster or emergency declaration by the President; for physical loss and/or economic injury disaster loans.

(2) Declared by the SBA Administrator for physical loss and economic injury disaster loans.

(3) Designated by the Secretary of Agriculture for Agri-dependent businesses.

(d) *Notification of SBA disaster areas.* The SBA Central (National) Office will notify the FmHA National Office when its disaster loan program is made available. The FmHA National Office will notify State Directors, by memorandum, of the SBA disaster areas; and State Directors will notify the appropriate County Supervisor(s) in writing.

§ 1945.27 Relationship between FCIC and FmHA.

(a) *General.* Exhibit A of FmHA Instruction 2000-N (available in any FmHA office) is a Memorandum of Understanding between FCIC and FmHA. This Memorandum of Understanding is intended to assist in maintaining and improving the working relationship between the FCIC and the FmHA by providing encouragement to regular and FmHA EM loan borrowers to use Federal All-Risk Crop Insurance.

where available; assist FmHA borrowers to obtain All-Risk Crop Insurance or other agricultural commodity insurance coverage; and exchange information essential to the elimination of duplicating compensatory disaster benefits from the FCIC and FmHA for the same disaster losses.

(b) *Annual meeting with FCIC.* FmHA State Directors will meet with FCIC Field Operations Office Directors at least once each year to review the Memorandum of Understanding and rededicate their efforts and those of their respective agency employees to comply with the agreements contained in the Memorandum of Understanding.

(c) *Contact after EM actual loss loans are made available.* After each disaster, when EM loans are made available, State Directors are required to promptly contact the FCIC Field Operations Office Director to review the Memorandum of Understanding and agree on how each agency will fulfill its responsibilities in dealing with the disaster situation.

(d) *Notification to County Offices.* State Directors will provide instructions for actions to be taken by County Supervisors in maintaining a good relationship with FCIC Insurance Representatives.

§ 1945.28 Relationship between ASCS and FmHA.

Exhibit A of FmHA Instruction 2000-JJ (a copy of which is available in any FmHA office) is a Memorandum of Understanding between ASCS and FmHA. This Memorandum of Understanding is intended to assist in maintaining and improving the working relationship between the ASCS and the FmHA by coordinating certain ASCS disaster programs with the FmHA EM loan program. It specifically identifies the administrative responsibilities of FmHA County Supervisors and ASCS County Executive Directors concerning disaster benefits.

§ 1945.29 [Reserved]

§ 1945.30 FmHA Emergency Loan Support Teams (ELST).

(a) *Use of ELSTs.* ELSTs are to be used when a disaster warrants immediate attention by FmHA in implementing the EM loan program. Also, ELSTs are used when unusually large numbers of EM loan applications are received and personnel from other areas are required to be temporarily assigned to assist in rendering prompt service to the affected area(s).

(b) *State Office ELST.* Each State Director shall form an ELST to be deployed, when needed, in areas affected by a major disaster,

Presidential emergency, or a natural disaster. ELSTs shall assist the State Directors in expediting the making of EM loans to disaster victims.

(1) State Directors shall use the ELSTs formed in their State(s) and all other FmHA personnel within their State(s), as the need arises, in making EM loans. If additional help is needed beyond that available in the State, including the use of overtime, temporary personnel, and/or private contractors, the State Director shall advise the National Office of these needs and request outside assistance.

(2) Upon request from a State Director, the Assistant Administrator, Farmer Programs, will consider detailing ELSTs from other States to assist in the making of EM loans.

(3) State ELSTs will consist of a team leader and team members, selected by the State Director.

(i) The State ELST can include Farmer Programs Specialists, County and Assistant County Supervisors, Program Review Assistants, County Office Assistants, and County Office Clerks.

(ii) So that no one person or County Office unit bears an unfair burden, State team members will be changed from time to time.

(iii) Team members will provide training in EM loan making and EM loan servicing to all County Office employees.

(iv) District Directors are responsible for notifying the State Director of any need to change a team member within their district.

(4) State ELSTs will be trained as follows:

(i) The National Office will hold training meetings or workshops for ELST leaders as needed; and

(ii) State ELST leaders will be responsible for training and keeping the State team and all other State personnel currently informed on all phases of EM loans.

(5) State Directors will issue a State supplement establishing an ELST for the State(s) under their jurisdiction. This supplement will name the team leader and all members. A copy of this supplement will be sent to the National Office, Attention: Director, Emergency Designation Staff.

(c) *National Office ELST leaders.* The National Office has established a cadre of ELST team leaders.

(1) National Office team leaders will be used as follows:

(i) Training of FmHA field personnel, other USDA personnel, and temporary personnel in the making of EM loans;

(ii) Assisting State Directors in the organization and expediting of assistance to eligible disaster victims; and

(iii) Leading ELSTs in areas with an unusually large volume of EM loan applications.

(2) Upon request from a State Director, the Assistant Administrator, Farmer Programs, will consider detailing one or more National Office team leaders to assist in the training of personnel and organizing of EM loan processing activities.

§ 1945.31 FmHA Emergency Loan Assessment Teams (ELAT).

The State Director will deploy ELATs on a continuing basis to the designated areas to monitor EM loan processing activities in order to minimize loan errors, especially in loss calculations and eligibility determinations. Such teams will be composed of State Office Farmer Programs staff members, District Directors or Assistant District Directors, Office Management Assistants/Program Review Assistants, and auditors from the Office of Inspector General, if they desire to participate. The team leader will keep the State Director informed by telephone and by submission of weekly written reports, setting forth the problems discovered and the corrective actions taken or to be taken. The State Director will keep all County and District Offices in the designated area of the State informed of the common problems found by the team and require appropriate corrective action to be taken by the County Office. Such actions will be monitored by the District Director and reported to the State Director when corrective measures have been completed. State Directors will monitor the handling of this quality control measure and will forward a copy of the ELAT team leader's report to the Administrator, Attention: Emergency Designation Staff.

§ 1945.32-1945.34 [Reserved]

§ 1945.35 Special EM loan training.

(a) *General.* When it is evident that a large number of farmers were affected by a widespread disaster in a State, the National Office will send a qualified representative(s) from the Emergency Designation Staff to the State to assist the State Director in conducting a training meeting(s) with State, District and County employees, provided there has not been a recent training meeting in that State.

(b) *Purpose.* A good training program is a must in disaster areas. This program should adequately instruct State and County Office personnel so that when the training is completed they will be well qualified to process EM loans without undue delay. The training

meeting will last two days (16 hours) and include a workshop and a test.

(c) *Objective.* The basic objective of this training program is to keep State and County personnel properly trained in the current methods of processing EM loan applications and EM loan making. This will result in more expeditious service to disaster victims during critical times and minimize erroneous interpretations of regulations by FmHA employees in administering the EM loan program.

(d) *Comprehensive EM loan training package.* A comprehensive EM loan training package has been developed for use by National Office and Staff Office personnel in training all EM loan writers (both regular and temporary employees). This package, including an application kit, will be used for the EM loan training meetings, and any subsequent EM loan training meetings conducted by State or District personnel.

(e) *Funding.* Travel for the two-day session required in paragraph (b) of this section may be funded from a special purpose account with advance approval from the Budget Division. The following information must be provided to the Budget Division when a request is made for these additional travel funds:

- (1) Number of sessions.
- (2) Categories, by number, of personnel attending each session.
- (3) Estimated cost per session.

§ 1945.36–1945.44 [Reserved]

§ 1945.45 Public information function.

A good public information program is a must in disaster areas. This program should inform farmers and the general public when and where EM loans are available. Also, the information will state the EM loan objectives, eligibility requirements, and type of assistance available. Public information functions will be performed according to Exhibit A of FmHA instruction 2015–A (available in any FmHA office)

§ 1945.46–1945.50 [Reserved]

3. Sections 1945.151 through 1945.200 are revised to read as follows:

Subpart D—Emergency Loan Policies, Procedures and Authorizations

Sec.

- 1945.151 Introduction
- 1945.152 Program objectives
- 1945.153 Loans for citrus grove rehabilitation or reestablishment.
- 1945.154 Definitions and abbreviations.
- 1945.155 Relationship between FmHA and other federal agencies.
- 1945.156 The test for credit and certification requirements for availability of credit elsewhere
- 1945.157–1945.160 [Reserved]

Sec.

- 1945.161 Receiving and processing applications.
- 1945.162 Eligibility requirements.
- 1945.163 Determining qualifying losses, eligibility for EM loan(s) and the maximum amount of each.
- 1945.164–1945.165 [Reserved]
- 1945.166 Loan purposes.
- 1945.167 Loan limitations and special provisions.
- 1945.168 Rates and terms
- 1945.169 Security requirements.
- 1945.170–1945.172 [Reserved]
- 1945.173 General provisions—compliance requirements.
- 1945.174 [Reserved]
- 1945.175 Options, planning, and appraisals.
- 1945.176–1945.179 [Reserved]
- 1945.180 County Committee certification.
- 1945.181 [Reserved]
- 1945.182 Loan docket preparation.
- 1945.183 Loan approval or disapproval.
- 1945.184 [Reserved]
- 1945.185 Actions after loan approval.
- 1945.186–1945.187 [Reserved]
- 1945.188 Chattel lien search.
- 1945.189 Loan closing.
- 1945.190 Revision of the use of EM loan funds.
- 1945.191 [Reserved]
- 1945.192 Loan servicing.
- 1945.193–1945.199 [Reserved]
- 1945.200 OMB control number.

Subpart D—Emergency Loan Policies, Procedures and Authorizations

§ 1945.151 Introduction.

(a) *Policy.* This subpart prescribes the policies, procedures, and authorizations of the Farmers Home Administration (FmHA) for making insured emergency (EM) loans to farmers, ranchers, and aquaculture operators (hereinafter referred to as farmers), as provided by law. FmHA's policy is to make loans to any otherwise qualified applicant without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap (provided the applicant can execute a legal contract). These regulations apply to applicants/borrowers and FmHA personnel involved in making EM loans.

(b) *Program administration.* The County Supervisor is the local contact person for applicant processing, loan making, and loan servicing activities.

§ 1945.152 Program objectives.

The objective of EM loans is to provide financial assistance to cover actual losses sustained by eligible farmers, so that they can return to normal farming operations after sustaining substantial losses as a result of a declared/designated disaster. EM loans are made to assist eligible disaster farm victims rehabilitate and resume their normal operations. This objective will be accomplished through the

extension of credit and such supervisory assistance as is determined necessary to achieve the objectives of the loan and protect the Government's interest. Supervisory assistance will be given in accordance with the provisions of Subpart B of Part 1924 of this chapter. The borrower has the responsibility of achieving the objectives of the loan. The borrower accomplishes this by repaying the loan according to the planned repayment schedule, maintaining FmHA security, using loan funds for planned purposes only and following a plan of operation agreed upon with FmHA.

§ 1945.153 Loans for citrus grove rehabilitation or reestablishment.

Exhibit D of this subpart, which deals with loans made to operators of citrus groves, modifies some of the provisions contained in this subpart.

§ 1945.154 Definitions and abbreviations.

(a) *Definitions.*—(1) *Applicant.* The person or entity conducting the farming operation at the time of the disaster and making a request for EM loan assistance from FmHA.

(2) *Approval official.* An FmHA official who has been delegated loan approval authorities within applicable loan programs, subject to the dollar limitations contained in tables available in any FmHA office (see FmHA Instruction 1901–A, Exhibit C).

(3) *Aquaculture.* The husbandry of aquatic organisms in a controlled or selected environment. Aquatic organisms are fish (the term "fish" includes any aquatic gilled animal commonly known as "fish," as well as mollusks, crustaceans, or other invertebrates produced under controlled conditions—that is, feeding, tending, harvesting, and such other activities as are necessary to properly raise and market the products—in ponds, lakes, streams, or similar holding areas), amphibians, reptiles, or aquatic plants. An aquaculture operation is considered to be a farm only if it is conducted on grounds which the applicant owns, leases, or has an exclusive right to use. An exclusive right to use must be evidenced by a written permit or lease issued to the applicant and the permit or lease must specifically identify the waters to be used solely by the applicant.

(4) *Borrower.* When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the corporation, cooperative, partnership, or joint operation is the borrower.

(5) *Calendar year.* The 12-month period beginning January 1 and ending December 31 of any given year.

(6) *Cooperative.* An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State(s) in which the entity will operate a farm(s).

(7) *Corporation.* For the purpose of this subpart, a private domestic corporation recognized as a corporation and authorized to carry on farming, ranching, or aquaculture operations under the laws of the State(s) in which the entity will operate a farm(s).

(8) *Eligible area.* A county or similar political subdivision in which EM loans are made available.

(9) *Established farmer.* A tenant-operator or owner-operator of a family farm who was actively participating in the operation and management of a farming operation at the time of the disaster, spends a substantial portion of time in carrying out the farming operation, and had planted a crop or had purchased livestock which were on the farm at the time of the disaster. If the applicant is a cooperative, a corporation, a partnership or a joint operation, it must be primarily engaged in farming, i.e., the applicant entity must derive over fifty percent (50%) of its gross income from all sources from its farming operation. The gross farm income figures will be taken from the proposed annual plan or farm budget that will cover the next projected 12-month period (or crop year).

(10) *Family farm.* A farm or ranch as defined in § 1941.4 of Subpart A of Part 1941 of this chapter.

(11) *Farm.* A tract or tracts of land, improvements, and other appurtenances considered to be farm property which are used or will be used in the production of crops or livestock and meet the requirements of paragraph (a)(10) of this section. This includes aquaculture operations which meet the requirements set forth in paragraph (a)(3) of this section and includes nonfarm operations which meet the requirements set forth in paragraph (a)(23) of this section. It also includes a residence which, although physically separate from the farm acreage, is ordinarily treated as a part of the farm in the local community.

(12) *Farm and home plan.* For the purpose of this regulation, any reference to farm and home plan(s) means any farm planning and/or recordkeeping system(s) acceptable to the loan approval official. This includes but is not limited to: Form FmHA 431-2, "Farm

and Home Plan;" farm budgets; State University Computerized Farm Planning Systems; etc.

(13) *Farming enterprise.* The business of producing and marketing crops, livestock, livestock products, and aquatic organisms through the utilization and management of land, water, labor, capital, and basic raw materials.

(i) *Single enterprise.* An enterprise which constitutes an integral part of an applicant's total farming operation. Some crops such as corn may be produced as a cash or feed crop. In such cases, the actual acres produced for each purpose for the best 4 of the past 5 years will be used in determining losses for each single enterprise. The following are examples of single enterprises:

(A) All cash field crops;

(B) All cash vegetable crops;

(C) All cash fruit and nut crops;

(D) All feed crops fed to applicant's own livestock. A livestock enterprise must be a basic part of the farming operation in order for feed crops to be considered as a basic enterprise in determining eligibility based on production losses to feed crops;

(E) Beef operations;

(F) Dairy operations;

(G) Hog operations;

(H) Poultry operations;

(I) Aquaculture operations; and

(J) All other operations (i.e., trees grown for timber, etc.)

(ii) *Basic part of a farming operation.* Any single enterprise which normally generates sufficient income to be considered essential to the success of the total family farming operation.

(14) *Fixture.* Generally, an item attached to a building or other structure or to land in such a way that it cannot be removed without defacing or dismantling the structure, or substantially damaging the item itself.

(15) *Hazard insurance.* Includes coverage against losses due to fire, windstorm, lightning, hail, explosion, business interruption, riot, civil commotion, aircraft, land vehicles, marine vehicles, smoke, builder's risk, public liability, property damage, flood or mudslide, workmen's compensation, or any similar insurance that is available and needed to protect the security, or that which is required by law.

(16) *Household contents.* The essential household items necessary to maintain viable living quarters such as: stove, refrigerator, furnace, couch, chairs, tables, beds, lamps, etc. Excludes all luxury items including jewelry, furs, antiques, paintings, etc.

(17) *Incidence period.* The specific date(s) during which a disaster occurred.

(18) *Insured loan.* A loan made directly by FmHA as lender from the Agricultural Credit Insurance Fund, and serviced by FmHA personnel.

(19) *Irregular payment schedule.* To schedule the payment of interest in part and/or principal in whole or in part.

(20) *Joint operation.* A farming entity in which two or more farmers work together sharing equally or unequally land, labor, equipment, expenses and/or income. The joint ownership of land and/or equipment or the exchange of labor and equipment in separate farming operations does not constitute a joint operation. They are two separate individual operations.

(21) *Majority or controlling interest.* Any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation, partnership, or joint farming operation.

(22) *Market value.* The amount which a willing buyer would pay a willing, but not forced, seller in a completely voluntary sale.

(23) *Nonfarm enterprise.* Any nonfarm business enterprise including recreation which is closely associated with the farming operation and located on or adjacent to the farm and provides income to supplement farm income. The business must provide goods or services for which there is a need and a reasonably reliable market. This may include, but is not limited to, such enterprises as custom farm work on other farms, raising earthworms, exotic birds, tropical fish, dogs and horses for nonfarm purposes, welding shops, roadside stands, boarding horses and riding stables.

(24) *Normal year's production.* The normal year's production is the average per acre yield or production per animal unit of the 4 better years out of the 5 years immediately preceding the disaster year.

(25) *Partnership.* An entity consisting of individuals who have agreed to operate a farm. The entity must:

(i) Be recognized as a partnership by the laws of the State(s) in which the entity will operate a family farm;

(iii) Be authorized to own real and/or personal property;

(iii) Be able to incur debts in its own name.

(26) *Physical loss.* Damages to or destruction of physical property including farmland (except sheet erosion); structures on the land such as buildings, fences, dams, etc.; machinery, equipment, and tools; livestock;

livestock products; harvested crops; supplies; and growing crops and pasture which will be replanted/reestablished. Loss of income from custom work, due to a short crop caused by the disaster, cannot be counted as a disaster loss because custom farm work is a nonfarm business and not an agricultural enterprise.

(27) *Feasible Plan.* A feasible plan is one which meets the requirements of § 1924.57(c)(5) of Subpart B of Part 1924 of this chapter.

(28) *Production loss.* The reduction in normal production, directly attributable to the natural disaster, of yield per acre and/or quality of crops produced, of quantity and/or quality of livestock products produced per animal unit, and of weight gain and/or natural increase in numbers of livestock units. Loss of income from custom work, due to a short crop caused by the disaster, cannot be counted as a disaster loss because custom farm work is a nonfarm business and not an agricultural enterprise.

(29) *Qualifying disaster.* A major disaster, Presidential Emergency, or natural disaster as defined in Subpart A of this part.

(30) *Qualifying physical loss.* A loss caused by damage to or destruction of physical property that is essential to the successful operation of the farm; and if it is not repaired or replaced, the farmer would be unable to continue operations on a reasonably sound basis.

(31) *Qualifying production loss.* The production loss an applicant sustained from the disaster that is equivalent to at least a 30 percent loss of normal per acre or per animal production in any single enterprise, which is a basic part of the total farming operation. Losses of livestock increases, e.g., calves, pigs, etc., are considered production losses, except when live animals are destroyed. When an animal is killed, lost or solid because of injury or reduced production potential caused by the disaster, it is considered a physical loss. Reductions in the production of livestock and livestock products, or reductions in weight gains of animals due to homegrown feed crop and/or pasture losses, will not be considered production losses when replacement feed is available to purchase, regardless of the cost of that feed (normally production losses to livestock enterprises will be based on feed crop and pasture losses). When the disaster has severely disrupted the usual feeding schedule of a livestock enterprise because of extended utility failure or inaccessibility to the livestock, losses in production of milk, eggs, weight losses, etc., may be considered as production

losses. Production losses will be calculated based on the reduction from normal which occurs during the disruption period and the period needed to bring production back up to the normal level.

(32) *Related by blood or marriage.* As used in this subpart, individuals who are related to one another as husband, wife, parent, child, brother or sister.

(33) *Security.* Property of any kind subject to a real or personal property lien. Any reference to collateral or security property shall be considered a reference to the term "security."

(34) *State or United States.* The United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(35) *Subsequent loans.* Any EM loans processed by the Finance Office after it processed the first EM loan to a borrower. The disaster designation number is not considered in determining whether an EM loan is a subsequent loan.

(36) *Termination date.* The date specified in a disaster declaration/determination/notification which establishes the final date after which EM loan applications can no longer be accepted.

For both physical and production losses, the termination date is 8 months from the date of the disaster declaration/determination/notification.

(b) *Abbreviations.* The following abbreviations are used in this subpart:

(1) *ASCS*—Agricultural Stabilization and Conservation Service.

(2) *ECP*—Emergency Conservation Program.

(3) *EFAP*—Emergency Feed Assistance Program.

(4) *EM*—Emergency Loans.

(5) *FCIC*—Federal Crop Insurance Corporation.

(6) *FEMA*—Federal Emergency Management Agency.

(7) *FIA*—Federal Insurance Administration.

(8) *FmHA*—Farmers Home Administration.

(9) *FMI*—Forms Manual Insert.

(10) *INS*—Immigration and Naturalization Service.

(11) *OGC*—Office of the General Counsel.

(12) *SBA*—Small Business Administration.

(13) *UCC*—Uniform Commercial Code.

(14) *USDA*—United States Department of Agriculture.

§ 1945.155 Relationship between FmHA and other federal agencies.

(a) *ASCS and FmHA.* A Memorandum of Understanding between the ASCS and FmHA on disaster assistance pertaining to the exchange of information essential to the elimination of duplicate compensatory benefits from the two participating agencies for the same disaster losses is Exhibit A of FmHA Instruction 2000-JJ (available in any FmHA office).

(b) *FCIC and FmHA.* A Memorandum of Understanding between the FCIC and FmHA pertaining to crop insurance and exchanging information essential to the elimination of duplication of disaster compensatory benefits is Exhibit A of FmHA Instruction 2000-N (available in any FmHA office).

§ 1945.156 The test for credit and certification requirements for availability of credit elsewhere.

(a) *Applicants who certify that other credit is available.* Applicants applying for EM loan assistance who certify they are able to obtain sufficient and suitable credit elsewhere to meet their actual farming and family living needs are not eligible for such assistance.

(b) *Applicants who certify that other credit is NOT available.* Applicants who certify they are not able to obtain sufficient credit elsewhere to meet their actual farming and family living needs must meet the requirements set out in this paragraph (b).

(1) *Test for credit for individuals and entities.* Applicants must be unable to obtain sufficient and suitable credit elsewhere to finance their actual needs at reasonable rates and terms, taken into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time. If the applicant has been getting credit away from the local community where the farming operation is located, such source(s) of credit must also be contacted and considered. The applicant's equity in *all assets*, including, but not limited to, real estate, chattels, stocks, bonds, and Certificates of Deposit will be considered in determining the applicant's ability to obtain such credit from other sources. Also, the applicant must offer to pledge *all assets* as security when requesting credit from other lenders. Cooperatives, corporations, partnerships and joint farming operations and the members, stockholders, partners and joint operators, both individually and collectively, must be unable to provide the required financing from their own

resources or with credit obtained from pledging those resources to other lenders. Form FmHA 1940-38, "Request for Lender's Verification of Loan Application," must be completed (with particular attention that Item 2A is completed) and filed in the applicant's County Office case folder; and any additional facts concerning the findings, in all cases, must be documented and recorded in the running case record.

(2) *Test for credit certification requirements.* Applicants will certify in writing on the application form, and the County Supervisor shall make the determination whether or not adequate and suitable credit is available elsewhere to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time. The County Supervisor will consider all such information obtained from other lenders in making the determination, but is required to make an independent decision concerning the applicant's ability to obtain the needed credit elsewhere. Should the County Supervisor determine that the applicant can obtain the necessary credit elsewhere to meet actual needs, the applicant will be notified, in writing, that the applicant is not eligible for an EM loan(s).

(i) For applicants whose total EM loan(s) request is for \$300,000 or less, the following actions will be taken:

(A) Applicants will be required to apply for the credit needed from their normal lender(s) and, if their normal lender(s) is located outside the local community, from at least one agricultural lender in the local community, to determine whether such lender(s) will provide the credit. Form(s) FmHA 1940-38 must be completed by all lending sources contacted, unless an exception is made under the provisions of paragraph (b)(2)(i)(C) of this section. Only when the applicant is not able to obtain a loan, from one or more of the lending sources contacted, will the applicant be considered for an EM loan. If the County Supervisor believes it necessary, the action required in paragraph (b)(2)(ii) of this section will be taken.

(B) When the County Supervisor receives letters or other written evidence, including Form FmHA 1940-38, from a lender(s) indicating that the applicant is unable to obtain satisfactory credit from that source(s), such correspondence will be included in the loan docket.

(C) If it appears from a review of the application that it would be unduly burdensome for the applicant to obtain written declinations of credit from other lenders, the County Supervisor may make an exception to this requirement, provided the County Supervisor is familiar enough with other lenders' farm loan programs to determine that no possibility exists for the applicant to obtain the credit needed from those lenders. When this conclusion is reached, the basis for it will be recorded in the running case record, and further checks will not be necessary. However, when this exception is used, the applicant's normal lender(s) must be contacted in all cases and the results of that contact(s) must be well documented in the running case record.

(ii) For applicants whose total EM loan(s) request is for more than \$300,000, the following actions will be taken:

(A) Applicants will be required to apply at not fewer than three conventional lending sources, including the Production Credit Association or Federal Land Bank, as appropriate, in the local community. In addition, when an applicant has a net worth of \$1 million or more and produces evidence that the necessary credit cannot be obtained in the local community, the applicant will be required to contact at least two other lending sources outside the local area. One or more of those lenders contacted must be the applicant's normal lender(s).

(B) Form FmHA 1940-38 must be completed by all lending sources contacted, returned to the County Office and handled in accordance with paragraph (b)(2)(i)(B) of this section.

(C) When the County Supervisor receives Form FmHA 1940-38 indicating that the applicant is unable to obtain satisfactory credit, the forms will be placed in the loan docket. However, such evidence will not preclude the County Supervisor from contacting other farm lenders in the area and making an independent determination of the applicant's ability to obtain credit elsewhere.

(3) *Use of nonessential assets (both farm and nonfarm) when seeking other credit.* When an EM loan(s) will be made, after other lenders have declined to provide needed credit to the applicant, the County Supervisor will, as a condition of loan approval, require the applicant and the owner(s) of the applicant entity to list all assets (both essential and nonessential) setting forth: Why those assets and any income derived from them are needed; and how such assets and the income derived from them will be used for essential family

living expenses and for maintaining a sound family farming operation(s). The loan approval official must determine that the applicant's plan for use of all assets and the income derived therefrom is acceptable. Any assets not contributing to essential family living expenses and maintenance of a sound family farming operation will be considered nonessential; and the applicant and the owner(s) must, as a condition of loan approval, agree to sell the nonessential assets. The proceeds from such sale(s) will be used to reduce the amount of EM loan(s) requested, provided the assets can be sold prior to the EM loan(s) closing. If the nonessential asset(s) cannot be sold before loan(s) closing, the ownership interest in those assets will be mortgaged and/or assigned to FmHA; and a written agreement prepared and executed, in a manner approved by the OGC, to sell those assets at their present market value, within a specified period not to exceed one year from the date of loan(s) closing. The proceeds from the sale of such assets will be applied as an extra payment on the FmHA loan carrying the lowest interest rate, which is secured by the asset(s) sold.

§§ 1945.157—1945.160 [Reserved]

§ 1945.161 Receiving and processing applications.

(a) *Applications.* Applications will be received and processed as provided in Subpart A of Part 1910 of this chapter, with consideration given to the requirements in Exhibit M of Subpart G of Part 1940 of this chapter.

(1) Applications for initial EM loans for each disaster will be received only in areas where EM loans are made available in accordance with Subpart A of Part 1945 of this chapter, and must be postmarked or received in the County Office before the specified 8-month termination date has passed. *These applications must be processed within twelve months after they are filed.*

(2) An applicant conducting a family farming operation in different counties or locations will be considered for only one application, and will file that application in the county in which the farm headquarters is located, unless determined otherwise by the State Director. When the operation is located in more than one State, the State Directors involved will consult and determine which State will process the application and service the loan(s).

(3) Applications may be received and processed from FmHA EM loan borrowers or SBA disaster housing loan borrowers for that portion of the

maximum EM loan originally authorized, but not requested initially from FmHA or SBA, provided the application is received within 8 months of the disaster declaration/determination/notification date.

(4) Applicants who are determined to be ineligible for an EM loan may be considered for other types of FmHA farm loans, when appropriate.

(b) *Statement of losses.* Applicant's statements of loss or damage will be obtained in support of their applications by having them complete Form FmHA 1945-22, "Certification of Disaster Losses."

(c) *ASCS verification of farm acreages, production and benefits.* From information obtained on Form FmHA 1945-22, the County Supervisor will send a separate Form FmHA 1945-29, "ASCS Verification of Farm Acreages, Production and Benefits," to the appropriate ASCS County Office for verification of ASCS registered farm(s) that the applicant has certified constituted part of the disaster year's operation. ASCS records of acres of crops planted/grown in the disaster year, actual (proven) yields in the disaster year, ASCS established yields for the disaster year, ASCS emergency payments and the other information requested on that form must be obtained. The use of Form FmHA 1945-29 is optional for EM loans made for physical losses. It is required for EM loans made for production losses on crops covered by ASCS programs.

(d) *Evidence of operation.* If the applicant is a cooperative, corporation, partnership, or joint operation, it will provide evidence that it was operating as a cooperative, corporation, joint operation or partnership at the time the disaster loss occurred, or has changed its form in accordance with § 1945.162(1) of this subpart, after the loss occurred.

§ 1945.162 Eligibility requirements.

In accordance with the Food Security Act of 1985 (Pub. L. 99-198) after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years.

Applicants will attest on Form FmHA 410-1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject an application for this reason is not appealable. In addition, the following requirements must be met:

(a) *Test for credit.* Applicants must be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(b) *Citizenship.* (1) An individual applicant must be a citizen of the United States (see § 1945.154(a) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I-151 or I-551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G-641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District Office. (See Exhibit B of Subpart A of Part 1944 of this chapter.) The completed form will be mailed to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G-641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST".

(2) More than a 50 percent interest in the cooperative, corporation, partnership or joint operation must be owned by United States citizens (see § 1945.154(a) of this subpart for the definition of "United States") or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act.

(c) *Established farmer.* An applicant must be an established farmer (as defined in § 1945.154(a) of this subpart). An applicant who conducts the farming operation as an individual must manage the farming operation. At least one stockholder, member, partner or joint operator of an entity applicant must manage the farming operation. One who does not devote full time to the farming operation may be considered the manager provided that person visits the farm at sufficiently frequent intervals to exercise control over the farming

operation, makes decisions and gives directions on how the operation(s) should be run, and sees that the operation is being carried on properly. Any applicant that employs an outside full-time hired manager or management service does not qualify as an established farmer, regardless of the number of visits made by the individual applicant or the members, stockholders, partners or joint operators. The following are not considered to be established farmers for EM loan purposes:

(1) An estate or trust; a corporation with over 50 percent of the ownership held by an estate, trust, another corporation, a partnership or a joint operation; a partnership or joint operation with over 50 percent of the ownership held by an estate, trust, corporation, another partnership or another joint operation.

(2) Integrated livestock, poultry, and fish processors who operate primarily and directly as commercial businesses through contracts or business arrangements with farmers. However, a grower under contract with an integrator or processor is considered an established farmer even though the applicant operates through a contract arrangement with an integrated processor, provided the operation is not managed by an outside full-time hired manager or management service. Farmers operating through contract may be considered for EM loans for physical losses and production losses. However, eligibility for and the amount of their production losses will be determined from the applicant's share of the agricultural production as set forth the contract.

(d) *Operate in a disaster area.* An applicant for an EM loan must have sustained qualifying losses in an area in which the availability of EM loans for actual losses has been determined in accordance with Subpart A of Part 1945 of this chapter; and must have filed an application before the expiration date. When an applicant's farming operation is located both in a designated county(ies) and a non-designated county(ies) refer to § 1945.163(a)(2)(xx) of this subpart.

(e) *Losses.* An applicant must have suffered qualifying production and/or physical losses to be eligible for an EM loan. Production losses must be to property in which the applicant has an ownership interest or interest in which a security interest can be obtained. Physical losses must be to property in which the applicant has an ownership interest. See § 1945.163 of this subpart

for the methods of determining qualifying losses.

(f) *Legal capacity.* An applicant must possess the legal capacity to contract for the loan.

(g) *Training and experience.* An applicant must have sufficient applicable training or farming experience in managing and operating a farm or ranch (within 1 of the last 5 years immediately preceding the application) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation and have the character (emphasizing credit history, past record of debt repayment and reliability), and industry necessary to carry out the proposed operation.

(h) *Honestly endeavor.* The applicant will honestly endeavor to carry out the undertakings and obligations required of the applicant in connection with the loan.

(i) *Family farm.* The applicant's farm must be a family farm as defined in § 1945.4 of Subpart A of Part 1941 of this chapter. If the applicant was conducting larger than a family farm at the time of the disaster but will be conducting a family farm at the time an EM loan is closed, the applicant meets this eligibility requirement.

(j) *Intent to continue farming.* An applicant must show an intent to continue the operation after the disaster. Those applicants who were required to stop temporarily because of the disaster loss or damage to their operations but intend to continue farming with EM loan assistance meet this requirement.

(k) *EM loan(s) to cooperatives, corporations, joint operations or partnerships.* When an EM loan is made to a cooperative, corporation, partnership or joint operation, only one initial EM loan can be made to the entity constituting the farming operation to cover the losses per disaster. However, an individual member, stockholder, partner, or joint operator may qualify for a separate EM loan to cover losses to a separate farming operation which the applicant conducts as an individual on a different farm tract.

(1) If the members, stockholders, partners or joint operators holding a majority interest are related by blood or marriage, at least one member, stockholder, partner or joint operator must operate the family farm.

(2) If the members, stockholders, partners or joint operators holding a majority interest are not related by blood or marriage, the majority interest holders must operate the family farm.

(3) If an entity applicant has an operator interest in any other farming

operation, that farming operation must be no larger than a family farm.

(l) *Change in the form of an applicant.* A change in the form of an applicant between the time of a qualifying loss and the time an EM loan is closed does not make the applicant ineligible for EM loan assistance. (Examples of changes in form are as follows: An entity may split into its individual members or into more than one entity; one or more individuals may leave an entity; an individual may incorporate; a partnership may become a joint operation, a corporation, a cooperative, or another partnership; a corporation may become a partnership, a joint operation, a cooperative, or another corporation; a cooperative may become a joint operation, a partnership, a corporation, or another cooperative; a joint operation may become a partnership, a corporation, a cooperative or another joint operation.) Such an applicant is eligible for EM loan assistance subject to all of the following limitations and qualifications:

(1) The applicant must meet all FmHA eligibility requirements at the time of loan closing.

(2) The applicant must not conduct an operation larger than the operation that was being conducted at the time of the disaster.

(3) In the case of an entity applicant, all of the individuals who have an interest in the entity must have had an ownership interest (or an interest in which a security interest could be obtained) in the farming operation at the time of the disaster and/or must be heirs of those who had an ownership interest (or an interest in which a security interest could be obtained) in the farming operation at the time of the disaster. Heirs must have been participating in the operation at the time the disaster occurred and must be engaged in the farming operation at the time of loan approval.

(4) In the case of an individual applicant, that person must have had an ownership interest (or an interest in which a security interest could be obtained) in the operation at the time of the disaster and/or must be an heir of those who had an ownership interest (or an interest in which a security interest could be obtained) in the operation at the time of the disaster. An heir has to have been participating in the operation at the time the disaster occurred and has to be engaged in the farming operation at the time of loan approval.

(5) To determine the amount of an actual loss loan an applicant may receive, first calculate the actual loss suffered by the operation(s) as it existed at the time of the disaster, in accordance with § 1945.163 of this subpart. Then

look at the individual applicant or the individual members, stockholders, partners or joint operators of an entity applicant and determine each person's percentage of ownership interest (or interest in which a security interest could be obtained) in the operation as it existed at the time of the disaster. For an entity applicant, add the percentages of all owners who had an interest in the entity that suffered the disaster losses. Multiply the actual loss suffered by the operation as it existed at the time of the disaster by this percentage figure; the result is the amount of actual loss loan the applicant may receive. For example, if one partner withdraws from a four-partner partnership (each person owning a 25% interest), the remaining three partners are eligible for 75 percent of the actual loss suffered by the operation as it existed at the time of the disaster.

§ 1945.163 Determining qualifying losses, eligibility for EM loan(s) and the maximum amount of each.

Disaster losses will be reported by applicants on Form FmHA 1945-22, "Certification of Disaster Losses," which states the physical and production losses suffered as a result of the declared/designated disaster. The applicant will report, on Form FmHA 1945-22, total acres and actual yields for all crops planted and/or grown in the disaster year, and the number of all animal units and production per animal unit being maintained at the time of the disaster. This information will come from the applicant's own records or from ASCS records of acres grown and proven actual yields in the disaster year. Applicants will also report their previous 5-year production levels as set forth in paragraph (a) of this section. This form will be completed and submitted to the County Office with the application, as soon as the losses and/or damages can be accurately assessed. The information provided by applicants on Form FmHA 1945-22 will be the primary basis for FmHA's calculation of qualifying losses, eligibility for EM loan(s) based on production losses, and an applicant's maximum amount of EM loan eligibility. Therefore, applicants are required to certify, subject to penalties of law, that the accuracy and completeness of the information provided on Form FmHA 1945-22 can be supported by written records. Applicants will be asked to identify on that form any single farming enterprise they consider basic to the success of their total farming operation, and in which they have suffered a disaster loss. When an applicant's certified production loss claims seem

unreasonable, they will be verified and the findings documented. Physical loss claims will be verified by requiring the applicant to furnish evidence of ownership and proof of the property loss or damage. Proof of ownership could be by deeds, mortgages, financial statements, insurance policies, and the like. Proof of the loss or damage could be by the applicant's own pictures, written certification by other persons or, when practical, by visual inspections by FmHA employees.

(a) *Production losses.* (1) The normal year's production will be established by eliminating the poorest year of the 5-year production history immediately preceding the disaster year and averaging the remaining 4 year's production. The applicant must select the year to be eliminated. The year selected to be eliminated must be the same year for all farm enterprises (i.e., all crops, livestock, and livestock products), which constituted a part of the applicant's farming operation during that year. A State supplement will be issued which will be used in connection with paragraph (a)(1)(iii) of this section. The State supplement will contain average production figures provided by the USDA State Crop and Livestock Reporting Service, when available. If those records are not available, the State supplement will contain statistical data on production from similar State or Federal bodies. When this information is available by county, county averages will be used. If available only by State, the State averages will be used throughout the State. In those States where neither a County nor State average is available for an agricultural commodity(ies), the State Director, with the advice of representatives of other Federal and State agricultural agencies, will establish County or State averages and advise County Offices of these averages in the State supplement. State Directors and Farmer Programs Chiefs in adjoining States will consult with each other before releasing these figures. Applicants will identify, on Form FmHA 1945-22, the production record source(s) to be used in determining the normal year's production for each commodity that was produced on all farms operated by the applicant in the disaster year. Applicants must use the production record source(s) for each crop in the order of priority as follows:

(i) *The applicant's actual reliable farm records or ASCS "actual yields,"* for those years for which they are available. When the ASCS "actual yields" are used, they will be documented on Form FmHA 1945-29. If actual yields are not available for all of

the 5 crop year(s), the applicant will first use a combination of actual records which are available and the ASCS established yield(s) for the disaster year, as specified in subparagraph (ii). If ASCS established yields are not available for the disaster year, then the applicant will use a combination of actual records which are available and County or State averages, as specified in paragraph (a)(1)(iii).

(ii) *The ASCS "established yields."* When this production record source is used, the applicant must obtain the information from ASCS and submit it with the application to FmHA. The disaster year established yield, as provided by ASCS for any given crop, will be used as the yield for those years for which actual yields are not available and combined with actual yields to determine the normal year's yields. When there are no actual yields available for any of the 5 years, and there is an ASCS established yield available for the disaster year, the established yield will be considered as the normal year's yield, without any calculations. This production record source will be used only for those years and those commodities for which the applicant's or ASCS actual yields are not available.

(iii) *The County or State average yields.* These average yields will be found in the State supplement mentioned in paragraph (a)(1) of this section. This production record source will be used only for those commodities and those years for which neither the applicant's reliable farm records nor ASCS actual or established yields are available. Only when there are no "actual yields" or "established yields" available will County or State average yields be used. However, County or State average yields may be combined with actual yields when established yields are not available, but County or State average yields will not be combined with established yields when established yields are available for the disaster year.

(iv) When an applicant's production loss is on land being developed and maximum production capacity has not been attained, the State Director will establish normal yields on a case-by-case basis.

(2) FmHA loan official(s) will complete Form FmHA 1945-26, "Calculation of Actual Losses."

(i) In calculating production losses, the same established unit prices will be used for the disaster year and the normal year in computing the dollar value of each enterprise. Unit prices will be established in accordance with

paragraph (a)(2)(iv) of this section. In the production loss calculation, those crop production yields and production per animal unit records authorized in paragraphs (a)(1)(i), (ii) and (iii) of this section will be used.

(ii) Information certified on Form FmHA 1945-22 for the disaster year for all single enterprises (as defined in § 1945.154(a)(13)(i) of this subpart), which suffered a loss due to the disaster, will be transposed from Form FmHA 1945-22 to the appropriate places on Form FmHA 1945-26. The FmHA official completing Form FmHA 1945-26 is responsible for verifying loss information provided by the applicant. Information obtained from ASCS on Form FmHA 1945-29 will be cross checked with information provided by the applicant on form FmHA 1945-22. Whenever there is a discrepancy between an applicant's acreage and/or yield information provided on Form FmHA 1945-22, by the applicant, and the information provided by ASCS on Form FmHA 1945-29, the applicant will be told about the discrepancy and the applicant and the County Supervisor will complete Form FmHA 1945-22 so that it accurately reflects the applicant's average and yield.

(iii) When the applicant's disaster loss is due to a reduction in *quality* with or without a quantity loss, rather than a reduction in *quantity* only, the applicant will be given credit for quality loss by adjusting the actual production yield downward. This will be accomplished by converting the dollar value of the quality loss to a yield reduction equal in value to the quality loss. When a quality adjustment is necessary, the basis used in making the adjustment will be the applicant's *accurate* records of production and sales receipts showing the actual price received and the grade of the commodity for the five years immediately preceding the disaster year. The normal year's quality will be established by eliminating the poorest of the five-year record. The applicant must select the year to be eliminated. The burden of providing this information rests with the applicant.

Example 1: A farmer has accurate records indicating that the farmer's normal year's production of corn is 100 bushels per acre of No. 2 corn. Due to flooding after the ears were set and mature, the corn was coated with a filmy residue. This resulted in the quality grade being reduced from No. 2 to No. 3. The commodity price established for No. 2 yellow corn was \$3.00 per bushel. The farmer, due entirely to a *reduction in quality*, received \$1.50 per bushel. Therefore, when computing the disaster loss, the *quantity* produced would be reduced by 50% to reflect the *quality* loss.

	Established criteria	Disaster year actuals
Yield.....	100 bu./acre.....	100 bu./acre
Grade quality.....	No. 2 yellow corn.....	No. 3 yellow corn
Established price per bushel.....	\$3.00.....	\$1.50 (actual received)

Price per Unit Disaster Year (\$1.50) Divided by Price per Unit Normal Year (\$3.00) equals Quality Reduction (.5 or 50%)

Quality Reduction \times Disaster Year Actual Production = Quality (for loss calculation)

.5 \times 100 bushels per acre = 50 bushels per acre

50 bushels per acre will be entered on Form FmHA 1945-26 as the disaster year yield to reflect the quality reduction.

Example II: A cotton farmer usually produces No. 2 cotton. In the disaster year, the farmer produced No. 3 cotton and this quality loss resulted in a grade reduction amounting to a dockage of \$100.00 per bale (550 lbs.). The farmer's ASCS established yield is 550 lbs. per acre. The farmer produced 600 lbs. per acre in the disaster year. The established price for cotton for the disaster year is \$330.00 per bale (.60 cents per pound).

	Established criteria	Disaster year actuals
Yield.....	550 lbs./acre.....	600 lbs./acre
Grade.....	2.....	3
Price per bale.....	\$330.00.....	\$230.00

$$\frac{230}{330} = .70$$

.70 \times 600 = 420 lbs. per acre

420 lbs. per acre would be entered on FmHA Form 1945-26 as the disaster year yield to reflect the quality reduction.

In this example the farmer would not be eligible for an EM loss loan since the farmer suffered only a 24 percent loss.

$$\frac{420 \text{ lbs./acre}}{550 \text{ lbs./acre}} = 76\%$$

The calculations used for a quantity reduction due to quality losses must be documented on Form FmHA 1945-26 or on an attachment to that form.

(iv) The gross dollar value of production losses will be computed for all crops and all livestock enterprises, which were a part of any single enterprise that suffered losses due to the disaster, by calculating the value of the disaster year's production and subtracting that amount from the calculated value of the normal year's production. Unit prices for all agricultural commodities produced commercially in each State will be

established on a Statewide basis by all FmHA State Directors each year, and published in a State supplement to be issued not later than February 15 of each year. These commodity prices will be established by averaging the *monthly market prices of each commodity for the 12-month period preceding the calendar year in which the disaster occurs*. The monthly average market prices report, "Agricultural Prices," prepared by the National Agricultural Statistics Service (NASS), formerly the Statistical Reporting Service (SRS), will be mailed to each State Office from the FmHA National Office the first week of each month for the previous month. This report provides the average monthly prices for *all major agricultural commodities produced in each State*. For major commodities not reported monthly by NASS, State Offices will also be sent the NASS publication, "Crop Values Summary." This publication provides a 3-year history of seasonal average prices, by State and United States average, for all crops of any significance produced in the 48 contiguous States and Hawaii. Prices found in this annual publication, available by February 1 of the year succeeding the year being reported, are to be used as a *guide only* in establishing the annual price list of commodity prices only for those commodities for which the monthly average prices are not reported. State Directors *will* consult with other agricultural agency representatives and other agricultural lenders in the local area; and State Directors and Farmer Program Chiefs in adjoining States *will* consult each other for additional guidance before releasing their commodity price lists. Once established, these prices will not be changed for any EM loan processed under any disaster occurring on or after February 1 of that calendar year through January 31 of the next calendar year. These monthly and annual reports will be retained and used for reference each year when preparing the annual price lists of average commodity prices to be used Statewide for calculating actual production loss values, for all disasters that occur during the ensuing 12-month period.

(v) The amount of actual production loss will be calculated for the single enterprise which is a basic part of the farming operation (see § 1945.154(a)(13) of this subpart) by subtracting all financial assistance provided through any disaster relief program and all compensation for disaster losses provided by any source (*i.e.*, crop insurance indemnity payments, ASCS disaster program payments) *for that enterprise*, from the gross dollar amount

of production losses for that enterprise as determined in paragraph (a)(2)(iv) of this section.

(vi) Actual losses for tobacco, peanuts and other crops grown under acreage and/or poundage control will not be calculated differently than any other crop; *i.e.*, the calculations must not include the dollar value of carry over surplus poundage from previous year's(s) production or underproduced pounds to be sold or produced in future years. The value of underproduced poundage allotments and quotas must not be subtracted from the loss. Production from all "controlled" crop acres planted in the disaster year, including acreage above the producer's allotments and quotas, will be considered even though the carry-over crop is not eligible for price supports until the next marketing year.

(vii) Actual losses for spring and fall annual crops of the same species will be treated as two separate crop losses and listed separately on Forms FmHA 1945-22 and 1945-26. The crop(s) not affected by the disaster will be considered as having produced a normal year's yield.

(viii) The dollar value of the actual production loss for the single enterprise which is a basic part of the farming operation as designated by the applicant in Item F, Form FmHA 1945-22, will be divided by the previously calculated normal year's gross income for that enterprise. The result should be rounded to the nearest whole number. To illustrate, if the calculation shows a 29.49 percent production loss, round it down to 29 percent. If the calculation shows a 29.50 percent loss round it up to 30 percent. This establishes the percentage reduction in production from normal for that enterprise. If the percentage loss in *any* single enterprise (see § 1945.154(a)(13) of this subpart) which is a basic part of the farming operation equals or exceeds 30 percent, and the applicant is otherwise eligible, EM loan assistance will be considered.

(ix) Once eligibility is established, based on production losses, the total production loss sustained by the applicant, directly attributable to the disaster, is computed by adding the gross dollar amount of production losses of *all* single enterprises, whether or not they constitute a basic part of the farming operation, and subtracting from this total all financial assistance provided through any disaster relief program and all compensation for disaster losses provided by any source for those enterprises.

(x) The maximum EM loan for production losses is limited to 80 percent of the total calculated actual

production loss sustained by the applicant.

(xi) Production losses to hayland, pasture and rangeland used for grazing livestock owned by the applicant must be based on the production from only those acres which are utilized in the disaster year. Losses may be calculated by one of three methods when approved by the State Director. The State Director will decide which one of the following three methods will be used throughout the State to calculate losses to pasture and rangeland; and issue a State supplement to this subpart, setting forth the method(s) to be used Statewide.

(A) *The price per acre method.* The price per acre method is used to calculate pasture losses in the following manner:

(1) Determine the normal year's gross dollar value. To calculate this, multiply the number of acres available to be grazed for the disaster year by the established rental charge per acre per month (this figure is established by the State Director in accordance with paragraph (a)(2)(iv) of this section); by the average number of months grazed per year during the highest 4 out of the 5 preceding years.

(2) Determine the disaster year gross dollar value. To calculate this multiply the number of acres grazed during the disaster year by the established rental charge per acre per month (as determined in accordance with paragraph (a)(2)(xi)(A)(1) of this section); by the number of months the livestock were able to be grazed during the disaster year.

(3) Subtract the disaster year gross dollar value (see paragraph (a)(2)(xi)(A)(2) of this section) from the normal year gross dollar value (see paragraph (a)(2)(xi)(A)(1) of this section) to determine the value of pasture loss suffered during the disaster year.

(B) *The charge per head or animal unit method.* The charge per head or per animal unit method is used to calculate pasture losses in the following manner:

(1) Determine the normal year gross dollar value. To calculate this, multiply the number of animals or animal units grazed per month during the disaster year by the established rental charge per animal or per animal unit per month (this figure is established by the State Director in accordance with paragraph (a)(2)(iv) of this section); by the average number of months grazed per year during the highest 4 out of the preceding 5 years.

(2) Determine the disaster year gross dollar value. To calculate this, multiply the number of animals or animal units grazed per month during the disaster year by the established normal rental

charge per animal or per animal unit per month (as determined in accordance with paragraph (a)(2)(xi)(B)(1) of this section); by the number of months grazed during the disaster year.

(3) Subtract the disaster year gross dollar value (see paragraph (a)(2)(xi)(B)(2) of this section) from the normal year gross dollar value (see paragraph (a)(2)(xi)(B)(1) of this section) to determine the value of pasture loss suffered during the disaster year.

(C) *The forage equivalent method.* The forage equivalent method is used to calculate pasture losses in the following manner:

(1) Determine the normal year gross dollar value. To calculate this, multiply the number of acres grazed during the disaster year by the established price per pound or ton (this figure is established by the State Director in accordance with paragraph (a)(2)(iv) of this section); by the average number of pounds or tons of forage equivalent produced per acre per year during the highest 4 out of the preceding 5 years for forage of the type being used in this calculation. (The State Office will set forth the forage equivalent values to be used or the methodology to be used to derive this value in a State Supplement. This information may be set forth on a countywide or statewide basis. The State Director may contact the State's Extension Service or other knowledgeable sources to assist in establishing the forage equivalent determination).

(2) Determine the disaster year gross dollar value. To calculate this, multiply the number of acres grazed during the disaster year by the established price per pound or ton (this figure is established by the State Director in accordance with paragraph (a)(2)(xi)(C)(1) of this section); by the number of pounds or tons of forage equivalent produced for forage of the type being used in this calculation produced in the disaster year. (See paragraph (a)(2)(xi)(C)(1) of this section for further information.)

(3) Subtract the disaster year gross dollar value (see paragraph (a)(2)(xi)(C)(2) of this section) from the normal year gross dollar value (see paragraph (a)(2)(xi)(C)(1) of this section) to determine the value of pasture loss during the disaster year.

(xii) When a crop cannot be planted, an applicant may treat the loss either as a production loss or as a physical loss (see paragraph (b) of this section). When a crop cannot be planted and the applicant chooses to treat the loss as a production loss, the loss will be calculated as set out in this paragraph as follows: Add all income that is

derived from the enterprise to the variable and fixed costs which were not incurred because of the disaster. (The cost figures will be derived from current crop enterprise budgets prepared by State Agricultural Extension Service economists, based on normal farming conditions in the area.) Subtract this figure from the value of the normal year's production. The resulting figure is the gross dollar amount of production loss.

(xiii) When a crop can be only partially planted due to a disaster or when perennial crops (such as fruits or nuts) already growing cannot be produced or harvested due to a disaster, the loss will be considered a production loss. Such loss will be calculated as set out in paragraph (a)(2)(xii) of this section.

(xiv) When a crop is planted and completely destroyed by a disaster, a yield of "zero" may be shown on Form FmHA 1945-22 for the disaster year but only if no part of the crop could be harvested and no substitute crop could be planted and harvested. When figuring the actual dollar amount of production losses subtract the normal costs of harvesting and marketing which were not incurred for crops which were completely destroyed by a disaster. If a substitute crop is planted and harvested during the same crop year, a yield of "zero" should be shown for the original crop and the actual yield for the substitute crop on Form FmHA 1945-22. On Form FmHA 1945-26, the dollar value of the substitute crop must be subtracted from the dollar value of the normal year's production.

(xv) Losses to feed crops will be established by determining the normal year's gross dollar value of those crops and subtracting the disaster year's gross dollar value of feed crops. The difference establishes the disaster year's gross dollar loss for feed crops. The gross dollar value of feed crops produced is derived by multiplying the number of feed crop acres by the yield per acre by the unit price.

(xvi) When an applicant elects to sell feeder livestock at an earlier date than usual rather than purchase feed to replace that which was lost as a result of the disaster, the difference between what the sale price would have been if the livestock had been fed for the normal period and the disaster year's premature sale price may not be claimed as a loss.

(xvii) Eligibility for production losses to livestock enterprises may be based either on loss of production in feed crops, including pasture, to be fed to the applicant's own livestock; or on loss

(from normal) of weight gain of the livestock or livestock products produced, but *not both*. The value of feed produced on native rangeland and pasture constitutes a small portion of the total input costs of maintaining a foundation herd of breeding animals and their offspring. Therefore, loan approval officials will calculate production losses to livestock operations based on reductions in animal unit weight gain and natural increase in numbers.

Example:

A rancher has accurate records indicating that the rancher's 200 head foundation breeding cow herd produced a normal calf crop average of 85 percent (170 calves) with an average weaned weight of 350 pounds per calf. As a result of a drought, the rancher found it necessary to cull the cow herd by 50 cows over the normal number culled.

The predisaster value of the cows was \$600 per head. The rancher received .35¢ per pound for the cull cows, which had an average weight of 1100 pounds.

Additionally, the rancher's calf crop was only 70 calves with an average weight of 240 pounds in the disaster year (DY). Therefore, the rancher would have sustained a physical loss on the cow herd (see § 1945.163(b)(6)(i)(B)) and a production loss on the calf crop.

The established price for calves is .60 per pound.

Calculations:

The rancher's normal year's (NY) calf crop was 85 percent. Since the rancher reduced the breeding herd by 50 cows, an adjustment must be made to determine the calf losses. The reduced herd size is now 150 cows.

150 cows × 85% = 128 calves (NY calf crop from a cow herd of 150)

Normal year:

128 × .60 × 350 =	\$26,880 NY income
70 × .60 × 240 =	\$10,080 DY income
	\$16,800 loss

16,800 divided by 26,880 equals 63% production loss

Additionally, an EM loan may be made based on the physical loss of 50 cows. (See example in § 1945.163(b)(6)(i)(B)).

(xviii) Claims of production losses from the applicant will be verified by FmHA when the applicant's claims appear to be unreasonable.

(xix) Production losses for orchard crops (fruit or nut) will be only for the crop loss due to the qualifying disaster and determined in accordance with paragraph (a)(2) of this section.

(xx) When an applicant's farming operation(s) is conducted in a designated county(ies) and a non-designated county(ies), eligibility will be

established based on losses to a single enterprise which constitutes a basic part of the farming operation, without regard to whether the single enterprise is located in the designated county. The disaster year's *actual* yields, both in the designated and non-designated counties, will be used to determine losses.

Compensatory payments will be subtracted as explained in paragraph (a)(2)(v) of this section when determining eligibility. The amount of the production loss loan will be limited to the production loss sustained in the designated county, *minus* compensatory payments received or to be received for that portion of the farming operation located in the designated county.

(xxi) The County Supervisor will assign normal yields to all unplanted acreage covered by a Payment in Kind (PIK) contract, when calculating crop production losses on Form FmHA 1945-26.

(b) *Physical losses.* (1) In order to qualify for an EM loan(s) for physical losses, the damaged or destroyed physical property must be essential to the successful operation of the farm and if not repaired or replaced, the farmer would be unable to continue operations on a reasonably sound basis. The financing necessary to recover from the physical loss must be actually needed to permit the applicant to continue the operation.

(2) The claimed value of all physical losses due to disaster damage or destruction must be supported by written estimates for the necessary repair or replacement requested.

(3) Physical loss loan funds can be used to pay for only contracted or hired labor and materials and supplies purchased. Labor, machinery, equipment, and materials contributed by the applicant or borrower will not be chargeable to the cost of necessary repair and replacement.

(4) Damage to or destruction of nonessential buildings, structures or other items will not be repaired or replaced with EM physical loss loan funds. Any insurance compensation received or to be received for such losses will be considered as compensation for losses to essential farm buildings, structures and other items which need to be repaired or replaced.

(5) The maximum physical loss loan(s) will be determined by subtracting all financial assistance provided through any disaster relief program and all compensation for disaster losses provided by any source from the value of all actual physical losses caused by the disaster.

(6) The physical loss for the following items equals the market value at the time of the disaster for items lost, damaged or destroyed by or as a result of the disaster:

(i) Livestock.

(A) Death of an animal(s) caused by the disaster.

(B) Disaster related damage to an animal's(s') health, which has impaired or reduced its normal production capability and its market value. This includes forced reductions of foundation breeding stock caused by the disaster. Physical losses, under these conditions, would be calculated by establishing a dollar value per head, or unit, at the time the disaster occurred, and deducting the reduced dollar value received from the disaster-caused sale of the animals. The difference in the two values would be considered a physical loss. (*THE ANIMALS SOLD MUST BE OVER AND ABOVE THE NUMBERS NORMALLY CULLED EACH YEAR*).

Example:

A physical loss would be calculated as follows:

Predisaster market value—50 cows × \$600/
cow = \$30,000

Price received for cull cows—50 cows × 1100
lbs. × 35¢ = \$19,250.

Physical loss = \$10,750 (\$30,000—\$19,250)

(ii) Livestock products on hand or stored.

(iii) Harvested crops on hand or stored.

(iv) Supplies on hand.

(v) Essential machinery and equipment.

(7) The actual physical loss for farm dwellings and essential household contents to be used by the operator and existing labor is the amount required to repair or replace the dwelling and/or household contents with a dwelling and/or contents of like standards, size and quality of that being replaced which will meet all applicable code requirements, and which will provide permanent, adequate, decent, safe, sanitary and modest living quarters.

(8) The actual physical loss for farm service buildings and farm real estate other than buildings is the amount required to repair the property or replace it with a building or property of like standards, size, quality and capacity of that being replaced which will meet all applicable code requirements and which will adequately meet the needs of the farming operation.

(9) The actual physical loss for income-producing trees (fruit or nuts) is the cost of removing the damaged or destroyed trees, cleaning debris and preparing the land for replanting, plus the cost of suitable replacement trees

and other expenses necessary to reestablish income-producing trees. Losses will not be determined by establishing a value for the trees destroyed or damaged. Any salvage value will be deducted from the loss. The applicant may choose to replace the damaged or destroyed trees with a different enterprise and may use actual loss loan funds for that purpose. (See Exhibit D of this subpart for physical loss loans to citrus growers.)

(10) The actual physical loss to trees (grown for timber) will be determined by establishing the value of trees, at the time of the disaster, less any salvage value. This estimate of value must be determined by a recognized forester who will cruise the timber and establish the value of the destroyed and damaged trees. The applicant may choose to replace the damaged tree enterprise with a different enterprise and use the actual loss loan funds for that purpose. Those applicants whose major farming enterprises are other than tree farming, but who have a wood lot that has been damaged, will have their tree losses considered as physical losses in the same manner as set forth for tree farms.

(11) The actual physical loss to growing crops or pasture is the cost of cleaning debris, preparing the land for replanting, seed, fertilizer, and other expenses necessary to *reestablish* the crop(s) or pasture. These costs can exceed the market value of the crop(s) or pasture at the time of the disaster.

(12) When a crop cannot be planted during the disaster year due to the disaster and the applicant chooses to treat the loss as a physical loss, the actual physical loss is limited to the cost of land preparation, other expenses incurred to the date of the disaster for crops that could not be planted, and a pro rata share of the total operation's fixed costs such as rent, taxes, and insurance. The applicant must provide an itemized list of all the claimed expenses incurred in the disaster year for those enterprises for which disaster losses are claimed. This list must be signed by the applicant. The amount of an EM loan cannot exceed the total itemized expenses listed by the applicant.

(13) EM loans will not be made to flood and mudslide victims to repair or replace damaged or destroyed farm dwellings or farm service buildings and their contents in areas where "National Flood Insurance" is available, except as authorized in § 1945.173(b) of this subpart.

(14) When an applicant has *dwelling* losses only, the applicant may apply for either an EM loan or SBA disaster housing loan to restore or replace the

dwelling and personal household contents affected by the disaster.

(c) *Personal household content losses (Subtitle B purposes).* (1) In order to qualify for EM loan assistance for this purpose, the damaged or destroyed household property must be essential to the maintenance of the household; and if not repaired or replaced, the farmer would be unable to remain on the property and continue the farming operation on a reasonably sound basis.

(2) The claimed value of all household losses due to disaster damage or destruction must be supported by written estimates for the necessary repair or replacement.

(3) Labor, equipment, and materials contributed by the applicant or borrower will not be chargeable to the cost of necessary household repairs and replacements.

(4) Damage to or destruction of non-essential household items will not be replaced or repaired with EM loan funds. Any insurance compensation received or to be received for such losses will be considered as compensation for those losses.

(5) The maximum EM loan(s) for repair or replacement of personal household contents is \$20,000.

(6) The EM loan(s) will be determined by subtracting all insurance claims and other compensation received or to be received for household losses from the cost of repairs or replacement value of the essential household items.

(d) *Compensation for losses.* All financial assistance provided through any disaster relief program and all compensation for disaster losses received from any source by an EM loan applicant will reduce the applicant's loss by the amount of such compensation. All such compensation will be considered in determining the applicant's eligibility for EM loan assistance and the maximum amount of loss loan entitlement. The amount of any disaster program benefits received from ASCS, including the Emergency Feed Assistance Program (EFAP), Emergency Conservation Program (ECP), and Disaster Program payments will be considered as compensation for losses (ASCS Deficiency Payments are not to be considered as compensation).

(e) *Maximum EM loans.* This amount will be limited to the amount necessary to restore the farm to its pre-disaster condition; however, this will not exceed the sum of the maximum production loss (paragraph (a)(2)(x) of this section) and the maximum physical loss (paragraph (b) of this section) or \$500,000. Whichever is the lesser. Indebted EM loan borrowers can receive additional EM loans based on a subsequent

disaster(s), but not to exceed \$500,000 for each additional qualifying disaster. No applicant or individual member of an entity applicant can be liable for more than \$500,000 in EM loans per disaster.

§ 1945.164—1945.165 [Reserved]

§ 1945.166 Loan purposes.

(a) *Policy on use of EM loan funds.* (1) The maximum amount of an EM loan(s), in addition to the limitations contained in § 1945.163(a)(2)(x) and (e) of this subpart, is further limited to the actual dollar loss, or the actual amount of essential family, farm, and nonfarm enterprise credit, whichever is the lesser, that the applicant needs to carry on normal operations. EM loan funds will not be used to finance a nonfarm enterprise, unless the loan is made to an individual applicant and such enterprise is needed to support a reasonable standard of living for the family. The use of EM loan funds will be identified in the farm and home plan so that determination can readily be made as to whether such loan(s) was used for authorized purposes and compensated the borrower for all or a portion of the actual dollar loss.

(2) EM loan funds may be used for those purposes described in paragraphs (b) and (c) of this section.

(b) *Real estate (Subtitle A) purposes.* EM loans for real estate purposes may be made to *owner-operators only*. The following are authorized real estate purposes for which EM loan funds may be used:

(1) Any Farm Ownership loan purpose (see Subpart A of Part 1943 of this chapter);

(2) Replace land and/or water resources that cannot be restored due to the disaster;

(3) Establish a new site for farm dwellings and service buildings so that the applicant can relocate outside of a flood or mudslide prone area;

(4) Replace land necessary to restore an effective operation which was liquidated as a result of the disaster before an EM loan could be made.

(5) Refinance secured and unsecured debts, including FmHA debts.

(c) *Operating (Subtitle B) purposes.* EM loans for operating purposes may be made to *owner-operators or tenant-operators*. The following are authorized operating purposes for which EM loan funds may be used:

(1) Any Operating Loan purpose (see Subpart A of Part 1941 of this chapter);

(2) Purchase and repair of essential household contents, and pay essential family living expenses. Entity operations

are not eligible for loan funds to be used for these purposes.

(3) Refinance secured and unsecured operating type debts, in whole or in part, including existing FmHA debts.

(4) Pay reasonable expenses customarily paid when obtaining, planning and closing a loan made for operating purposes, e.g., fees for legal, architectural and other technical services, which are required to be paid by the applicant, and which cannot be paid by the applicant from other resources. It is not intended that this paragraph be interpreted to include fees charged applicants by agricultural management consultants and other professionals for preparation of EM loan dockets, including farm and home plans and other FmHA forms used in processing such loans.

§ 1945.167 Loan limitations and special provisions.

(a) *EM loans prohibited for losses to crops grown in areas where FCIC crop insurance or multi-peril crop insurance is available.* Applicants will not be eligible for EM loans to cover damages and losses to any crop(s) harvested after December 31, 1986, which was not insured, but could have been insured with FCIC crop insurance or multi-peril crop insurance. In such instances, applicants will not qualify for EM loans based on losses to those crops which could have been insured against the losses, unless the crop(s) could not be planted due to the declared/designated/authorized disaster(s).

(b) *Relationship between EM loans and other FmHA loans.* An eligible EM loan applicant's total credit needs will be first considered through use of EM loan authorities in the maximum amount of entitlement, before other regular (FO, OL, SW) FmHA farmer program loan authorities are considered and used as a means of assisting the applicant/borrower.

(c) *Use of EM loan funds is not authorized for expansion purpose(s) beyond a family size farm.* EM loan funds will not be used to expand an applicant's farming, ranching, or aquaculture operation beyond that which constitutes a family size farming/ranching operation(s). This limitation is not intended to prohibit minor changes in crop or livestock enterprises, provided:

(1) Any new or changed crop or livestock system is proven for the area; and

(2) The applicant has the knowledge and ability to manage the changed operation; and

(3) Substantial new or additional capital investment is not required.

EM applicants who operate family farms (as defined in § 1941.4 of Subpart A of Part 1941 of this chapter) may, if eligible, receive regular FmHA farm ownership (FO), and/or operating (OL) loans simultaneously with their initial (EM) loan to help finance their farming operations. If a borrower expands the farming operation beyond a family size farm after receiving an EM loan, no further EM loan assistance will be given even though the borrower may suffer qualifying losses under a new declared/designated/authorized disaster.

(d) *Applicants involved in more than one operation.* Loans to applicants involved in more than one farming operation will be considered so long as the loan limit set out in § 1945.163 (e) of this subpart is not exceeded.

(e) *Refinancing guaranteed loans.* An EM loan will not be made to refinance a guaranteed loan, except when the following conditions are met:

(1) The circumstances causing the need to refinance were beyond the borrower's control.

(2) Refinancing is in the best interest of the Government.

(f) *New appraisals.* New "Appraisal of Real Estate Reports" are not required if the appraisal report in the file is not over one year old, unless the approval official requests a new appraisal report, or unless significant changes in the market value of real estate have occurred in an area within the one-year period. Any changes in the value of real estate or chattel security will be recorded, dated and initialed by the certified appraiser on the appropriate appraisal reports in the file.

(g) *Recordkeeping.* EM borrowers receiving or indebted for EM loans of \$100,000 or more are required to keep hard farm records on an approved format or use an accountant or a farm management service computer system as long as they are indebted for EM loans. EM borrowers are required to retain these records for at least three years. (See Subpart B of Part 1924 of this chapter.)

(h) *Disbursement of loan funds.* Loan funds which will not be disbursed for specific purposes at loan closing will not be requested in the initial request for funds from the Finance Office. The "Loan Disbursement System" will be used to make funds available when they are actually needed. See § 1945.189 (a)(8) of this subpart for instructions on the use of supervised bank accounts.

(i) *Prohibition on guaranteeing repayment of advances from other credit sources.* FmHA employees will not guarantee repayment of advances from other credit sources, either

personally or on behalf of applicants, borrowers, or FmHA.

(j) *Applicants previously indebted to FmHA.* An EM loan will not be approved if the applicant's previous FmHA debts have been settled pursuant to Part 1864 of this chapter (FmHA Instruction 456.1), Subpart B of Part 1956 of this chapter or if a debt settlement is currently being processed for the applicant in accordance with these regulations or if the applicant's property has been foreclosed on or repossessed by FmHA, unless the applicant's failure to pay the loan indebtedness was the result of circumstances beyond the applicant's control; the conditions which necessitated the debt settlement or release, other than weather hazards, disasters, or price fluctuations have been removed; and the borrower's operations will afford the borrower a reasonable prospect of repaying the loan and meeting other obligations. Prior to approval of the loan, the loan docket and any available case folders, including the County Supervisor's justification for making the loan, will be submitted to the State Office for a determination as to whether the loan should be made. Applicants who are rejected due to debt settlement actions will be sent proper notification as outlined in § 1910.6(b)(1) of Subpart A of Part 1910 of this chapter.

(k) *Highly erodible land and conversion of wetland.* Loans may not be made for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands for the production of an agricultural commodity, as further explained in Exhibit M to Subpart G of Part 1940 of this chapter.

§ 1945.168 Rates and terms.

(a) *Interest rates.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rate in effect at the time of loan approval or loan closing. If the applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type assistance involved. Interest on the initial advance will accrue from the date of the promissory note. Interest on other advances will accrue from the date of the loan check for each such advance.

(b) *Terms of loans.* Loans will be scheduled for repayment at such time as the FmHA approval official may determine, consistent with the purpose of and need for the loan. The approval official will also consider the useful life

of the security and the repayment ability of the applicant, as reflected in the completed farm and home plan, when setting the term of each loan. There must be some payment, e.g., an irregular payment, scheduled at least annually. Loans will not be scheduled for terms longer than are justified and supported by the farm and home plan. EM loans based on production losses and/or physical losses to chattels, foundation livestock and other intermediate term capital assets cannot exceed a 20 year payback; and EM loans based on physical losses to real estate, e.g., land, buildings and structures cannot exceed a 40 year payback.

(1) *Operating purposes (Subtitle B).* EM loans made for operating purposes will be scheduled for repayment as follows:

(i) Normally, loans will be scheduled for payment in a period not to exceed 7 years. However, loans may be scheduled for a longer repayment period if the FmHA approval official determines that the needs of the applicant justify a longer term, and the loan(s) can be secured for the longer term. Such longer period may be approved as warranted, but cannot exceed 20 years. This longer repayment period will be used only when the farm and home plan projections indicate the applicant would be unable to repay the loan in a shorter period, taking into consideration rescheduling possibilities. The reason(s) that a term longer than 7 years is given must be documented in the County Office case file.

(ii) Loans made for production expenses under § 1945.166(c) of this subpart, or for payment of bills incurred for such purposes for the operating or crop year being financed, will be scheduled for repayment when the principal income from the year's operations is normally received, *unless* the loan will be adequately secured with a lien(s) on items of collateral other than crops that are to be produced with the loan funds. In the latter event, repayment terms must comply with paragraph (b)(1) (i) and (iii) of this section.

(iii) Loans made to purchase or produce feed for productive livestock or livestock to be fed for the market, or to pay bills incurred for such purposes for the crop year being financed, will be scheduled for repayment when the principal income from the sale of such livestock or livestock products is planned to be received, *unless* the loan will be adequately secured with a lien(s) on items of collateral other than the livestock and livestock products that are to be produced with the loan funds. In the latter event, repayment terms must

comply with paragraph (b)(1) (i) and (ii) of this section.

(iv) When conditions warrant, installments may vary in amount. However, there must be at least a partial interest payment scheduled annually. Also, the final installment will not be larger than the amount which can be expected to be refinanced by other agricultural lenders or be repaid within a rescheduled period of 15 years. The applicant must be advised before the loan is closed that FmHA will review each case at the end of the initial loan term to determine if rescheduling is warranted, and that there is no obligation for FmHA to continue with the borrower after the expiration of the initial loan term.

(2) *Real estate purposes (Subtitle A).* EM loans made for real estate purposes under § 1945.165(b) of this subpart will normally be scheduled for repayment in not to exceed 30 years. Loans may be scheduled for a longer repayment period if the FmHA approval official determines that the needs of the applicant justify a longer repayment period. A longer term may be approved as warranted, but cannot exceed 40 years. The longer repayment period will be used only when it is evident the applicant will be unable to repay the loan in a shorter period. The reason(s) for giving the longer period must be well documented in the County Office case file.

(c) *Consolidation, rescheduling and reamortization.* When the loan approval official determines that consolidation, rescheduling, or reamortization will assist in the orderly collection of an EM loan, the loan approval official may take such action in accordance with Subpart A of Part 1951 of this chapter.

(d) *Graduation.* Borrowers will be required to graduate when FmHA determines they are able to obtain their needed credit from conventional sources. All borrowers will be advised that they will be reviewed for graduation periodically in accordance with the graduation procedure in Subpart F of Part 1951 of this chapter. EM borrowers will be reviewed for graduation three (3) years after their initial loan is made and every two (2) years thereafter, until graduation is achieved or the EM indebtedness is paid in full. Applicants will be advised during loan processing and again at loan closing that they will be required to refinance at any time when other satisfactory credit is available to them, even though their loans have not fully matured.

§ 1945.169 Security requirements.

The County Supervisor is responsible for seeing that adequate and proper security is obtained and maintained and that the security instruments have been properly executed and recorded to protect the interest of the Government

(a) *General requirements.* (1) Except for the modifications contained in paragraph (d) of this section, security must be of such a nature and extent that repayment of the loan(s) is assured, considering the applicant's managerial ability, soundness of the operation, and projected earnings. Security for loans may include, but is not limited to the following: Land, buildings, structures, fixtures, furniture, machinery, equipment, livestock, livestock products, growing crops, stored crops, inventory, supplies, accounts receivable, cash or special cash collateral accounts, marketable securities, certificates of ownership of precious metals, and cash surrender value of life insurance. Security may also include assignments of leases or leasehold interests having a mortgageable value; revenues; royalties from mineral rights, patents and copyrights; and pledges of security by third parties.

(2) A lien will not be taken on property that cannot be made subject to a valid lien; nor will a lien be taken on subsistence livestock, household goods, small tools and small equipment such as handtools, power lawn mowers, and other items of like type not needed for security purposes. A lien on feed crops does not have to be taken if the crops produced by the borrower are used to feed livestock, other than livestock being fed for market, and the loan is otherwise well secured.

(3) When an EM loan is made to an indebted FmHA guaranteed loan borrower, a junior lien may be taken on the borrower's chattels and real estate which serve as security for the guaranteed FmHA loan(s).

(b) *Personal liability.* The promissory will be signed as follows:

(1) *Individuals.* Only the applicant will sign the note as a borrower. If a cosigner is needed (see § 1910.3(e) of Subpart A of Part 1910 of this chapter), the cosigner will also sign the note. Any other signatures needed to assure the required security will be obtained as provided in State supplements. Persons who are minors or mental incompetents will not execute a promissory note. Except when a person has pledged only property as security for a loan, the purpose and effect of signing a promissory note or other evidence of indebtedness for a loan made or insured by FmHA is to incur individual personal

liability regardless of any State law to the contrary.

(2) *Cooperatives or corporations.* The appropriate officers will execute the note on behalf of the cooperative or corporation. The individuals designated by the cooperative or corporation that will operate the farm will sign the note as cosigner(s) and will be personally liable for the debt.

(3) *Partnerships or joint operations.* The note will be executed by the partner or joint operator authorized to sign for the entity, and all partners in the partnership or joint operators in the joint operation, as cosigners.

(c) *Personal and corporate guarantees by cosigners.* (1) If a review of all credit factors indicates the need for additional security, the loan approval official may require additional personal and/or corporate guarantees by a cosigner(s), including guarantees from parent, subsidiary or affiliated companies; relatives of the applicant; or any other willing party having equity in mortgageable assets. The loan approval official will require that such guarantees be secured by collateral which has an equity value. Any security referred to in paragraph (a)(1) of this section may be used to secure the guarantees.

(2) Guarantors of applicants will:

(i) In the case of personal guarantees, provide current financial statements (not over 30 days old at time of filing), signed by the guarantors and disclosing community or homestead property.

(ii) In the case of corporate guarantees, provide current financial statements (not over 30 days old at time of filing), certified by an officer of the corporation.

(3) When security is taken under paragraph (c) of this section, if chattels, it will be serviced in accordance with Subpart A of Part 1962 of this chapter; and, if real estate, in accordance with Subpart A of Part 1965 of this chapter.

(d) *Applicant's repayment ability.* When adequate security is not available because of the disaster, the loan approval official will accept as security such collateral as is available, if the following conditions are met:

(1) A portion or all of the security has depreciated in value due to the disaster; and

(2) The available security, together with the approval official's confidence in the applicant's repayment ability, is adequate to secure the loan. When considering "repayment ability" as a form of security, the reserve or margin between the balance available for debt repayment shown on the farm and home plan, and the principal and interest scheduled for payment is the "repayment ability" collateral which

may be considered in loan making actions when this plan is developed for the typical year. The "typical year" plan must show that the portion of the loan secured by "repayment ability" will be paid back in a reasonable period of time, i.e., the loan balance will be reduced to a fully secured loan within 3 years.

(e) *Life insurance.* If the loan approval official believes it is needed as additional security, life insurance may be required for the individual borrower or for the members, stockholders, partners, joint operators, of an entity borrower, listing FmHA as the beneficiary. This life insurance may be decreasing term insurance. A schedule of life insurance available as security for the loan will be included as part of the application.

(f) *Security for operating type purposes.* (1) EM loans made for Subtitle B (operating) purposes will be secured by a first lien on the crop(s) and/or livestock and livestock products being financed with EM loan funds. However, if the applicant does not have sufficient equity to secure the entire amount of the loan, additional security as prescribed in paragraph (a)(1) of this section will be taken to assure that the Government's financial interest will be protected. When the applicant can provide no security other than a first lien on the crop(s) and/or livestock and livestock products to be produced, the amount of the loan will be limited to 75 percent of the planned gross farm income as shown on the Farm and Home Plan based on normal production and prices authorized by the State Director for developing annual farm plans within the State.

(2) The advice of OGC will be obtained on how to perfect a security interest when milk base and grazing permits are taken as security.

(3) General intangibles, accounts receivable, and contract rights may be taken as security for production loss loans made to contract feeders, tenants with share-lease arrangements, or other farmers with similar arrangements.

(g) *Security for real estate type purposes.* EM loans made for Subtitle A (real estate purposes) will be secured by a lien on real estate. However, if the applicant does not have sufficient equity in the real estate to secure the entire amount of the loan, additional security as prescribed in paragraph (a)(1) of this section will be taken.

(h) *Combination of real estate and chattel security.* When chattels are primarily relied upon as security and real estate is taken only as additional security to better protect the Government's interest, only a certification of ownership and

verification of equity in real estate is required, if the applicant is an individual. Certification of ownership may be accepted in the form of a notarized affidavit from the applicant stating who is the owner of record of the real estate in question and acknowledging all known debts, with balances owed, against the real estate. Whenever the County Supervisor is uncertain of the ownership of or debts against the real estate security, and for all loans to cooperatives, corporations, partnerships, or joint operations a title search is required.

(i) *Security for personal household contents.* EM loan funds advanced for the purposes authorized in § 1945.163(c)(2) of this subpart will be secured by equity in farm machinery, livestock and/or real estate. Liens will not be taken on basic essential personal property (See § 1945.154(a)(16) of this subpart).

(j) *Purchase contracts.* If the real estate offered as security is held under a purchase contract, the following conditions must exist:

(1) The applicant must be able to provide a mortgageable interest in the real estate.

(2) The applicant and the seller must agree in writing that any insurance proceeds received for real estate losses will be used only to replace or repair the damaged real estate improvements which are essential to the farming operation; or used for other essential real estate improvements; or paid on the EM loan or on any prior real estate indebtedness, including the purchase contract. If necessary, the applicant will negotiate with the seller to arrive at a new contract without any provisions objectionable to FmHA.

(3) If a satisfactory contract for sale cannot be negotiated or the seller refuses to enter into the agreement described in paragraph (j)(2) of this section, the applicant will make every effort to refinance the existing purchase contract. If the applicant cannot obtain refinancing from another source, EM loan funds may be considered to pay off the contract.

(4) If the conditions set out in paragraphs (j) (1), (2) and (3) of this section exist and an EM loan is approved, it can be closed provided the FmHA escrow agent or designated attorney certifies on Form FmHA 427-10, "Final Title Opinion", or in separate writing that:

(i) The purchase contract is not subject to summary cancellation on default and does not contain any other provisions which might jeopardize either

the Government's security position or the borrower's ability to repay the loan.

(ii) The seller has agreed, in writing, to give FmHA notice of any breach by the purchaser, and has also agreed to give FmHA the option to rectify the condition(s) which amounts to a breach within thirty days. The thirty days begin to run on the day FmHA receives written notice of the breach.

(k) *Prior liens which may jeopardize the Government's security position.* If any prior liens against real estate offered as security contain future advance provisions or other provisions which might jeopardize the security position of the Government or the applicant's ability to meet the obligations of these prior liens and to pay the EM loan, the prior lienholders involved must agree in writing, before the loan is closed, to modify, waive, or subordinate such objectionable provisions to the interest of the Government. However, the Government's lien may be subject to the lien of another creditor for amounts advanced or to be advanced for annual operating and family living expenses for the operating or calendar year. The County Supervisor will determine if the creditor will be required to execute Form FmHA 441-13, "Division of Income and Nondisturbance Agreement," or a similar form approved by the OGC.

(l) *Circumstances under which advance notice of foreclosure or assignment is required.* When a junior lien on real estate is to be taken as security for a loan in States where a prior lienholder may foreclose the security instrument under power of sale, or otherwise, and extinguish junior liens of private parties without giving junior lienholders actual notice of the foreclosure proceedings, the prior lienholder must agree in writing to give FmHA advance notice of foreclosure or will offer to assign the mortgage to FmHA for the amount of the outstanding debt owed to the prior lienholder.

(m) *Hazard insurance.* Hazard insurance with a standard mortgage clause naming FmHA as beneficiary may be required for every loan made. The minimum amount of insurance required is the lesser of the replacement cost of the property being insured or the amount of the loan. If essential insurable buildings are located on the property, or if new buildings are to be erected or major improvements are to be made to existing buildings, the applicant will provide adequate hazard insurance coverage at the time of loan closing, or as of the date materials are delivered to the property, whichever is appropriate. Notwithstanding the requirements of Subpart A of Part 1806 (FmHA

Instruction 426.1) of this chapter, when the real estate appraisal report shows that the present market value of the land after deducting the value of buildings shown on the report exceeds the amount of the debt (including the EM loan) and the owner has equity equal to or exceeding the amount of the debt (including the EM loan), real estate property insurance may not be required. However, the applicant will be encouraged to obtain such insurance, if the applicant does not already have it, to protect the applicant's interest. If insurance claims for loss or damage to buildings to be replaced or repaired with loan funds are outstanding at the time the loan is approved, the applicant will be required to agree in writing that, when settlement is made, the proceeds of such claims will be used for replacement or repair of buildings, application on debts secured by prior liens, or application on the EM loan.

(n) *Crop insurance.* Crop insurance is a good management tool. Loan approval officials will, therefore, during the loan making process, encourage all borrowers who grow crops to obtain and maintain FCIC crop insurance or multiple crop insurance, if it is available.

(1) When EM loan funds are to be used as the primary source of financing for the ensuring year's crop production expenses, and such crop(s) will serve as security for the loan, and crop insurance is purchased by the borrower, FmHA will require an "Assignment of Indemnity" on the borrower's crop insurance policy(ies).

(2) When FmHA is not the primary lender for annual crop production expenses, but has or will have a security interest in the crop(s), and the applicant has purchased or will purchase crop insurance, an "Assignment of Indemnity" will be taken by FmHA, if the primary lender chooses not to do so.

(3) When EM loans are based on physical losses only, and loan funds will be used for annual production expenses the same conditions will prevail as stated in paragraph (n)(1) of this section.

(4) When the payment of crop insurance premiums is not required until after harvest, the premiums may be paid by releasing insured crop(s) sale proceeds, notwithstanding the limits in §§ 1962.17 and 1962.29(b) of Subpart A of Part 1962 of this chapter. If the borrower's crop losses are sufficient to warrant an indemnity payment, the premium due will be deducted by the insurance carrier from such payment. The FmHA County Office will maintain a record on Form FmHA 1905-12, "Monthly Expirations," of the dates which each borrowers' crop insurance premium(s) is due. This is in accordance

with FmHA Instruction 1905-A, a copy of which is available in any FmHA County Office.

(o) *Indian trust lands.* EM loans which are secured by trust or restricted land will be handled as follows: USDA and the Department of the Interior have agreed that FmHA loans which are to be secured by real estate liens may be made to Indians holding land in severalty under trust patents or deeds containing restrictions against alienation, subject to statutes under which they may, with the approval of the Secretary of the Interior, give valid and enforceable mortgages on their land. These statutes include, but are not limited to, the Act of March 29, 1956, (70 Stat. 62). When a lien is to be taken on trust or restricted property in connection with a loan to be made or insured by FmHA, the local representatives of the Bureau of Indian Affairs (BIA) will furnish requested advice and information with respect to the property and each applicant. The FmHA State Director should arrange with the Area Director or other appropriate local official of the BIA as to the manner in which the information will be requested and furnished. A State supplement will be issued to prescribe the actions to be taken by FmHA personnel to implement the making of loans under these conditions.

(p) *Unpatented public lands.* See Exhibit A of Subpart A of Part 1943 of this chapter for making EM loans to entrymen on unpatented public lands.

(q) *Taking security instruments.* The taking and filing of security instruments will be in accordance with Subpart B of Part 1941 of this chapter (chattels and crops) and with §§ 1945.169 and 1945.189 of this subpart (real estate). The borrower must have marketable title to the property which secures the loan and FmHA must ascertain that, when the security instruments are filed, no suits are pending or threatened which would adversely affect the interest of the borrower and the Government.

(r) *Assignments and consents.* (1) The value of stock required to be purchased by the Federal Land Bank (FLB) Association borrowers may be added to the recommended market value of real estate, provided:

(i) An assignment can be obtained on the stock; and

(ii) An agreement is obtained which provides that:

(A) The value of the stock at the time the FLB loan is satisfied will be applied on the FLB loan as long as any FmHA loan is outstanding, or

(B) The stock refund check is made payable to the borrower and FmHA.

(iii) The total of the stock value and the recommended market value of real estate is indicated in the comments section of Form FmHA 422-1, "Appraisal Report (Farm Tract)."

(2) An assignment of all or part of the applicant's share of income is required when title to a livestock or crop enterprise is held by a contractor under a written contract or when the enterprise is to be managed by the applicant under a share lease or share agreement. The contract, share lease or share agreement will be described specifically as "Contract Rights" or "Contract Rights in Livestock or Crops," (or as "Accounts" or "Accounts in Livestock or Crops," if required by a State supplement) and so forth, in paragraph (b)(1) of the financing statement. A form approved by OGC will be used to obtain the assignment.

(3) An assignment of income will ordinarily be taken to protect FmHA's interests.

(i) Form FmHA 443-16, "Assignment of Income from Real Estate Security," will be used for assignments of real estate security income unless that form is legally inadequate in a particular State, in which case it may be adopted with the approval of the OGC.

(ii) Form FmHA 441-8, "Assignment of Proceeds from the Sale of Products," will be used for products or income in which FmHA does not have a security interest under the UCC. Other forms approved by OGC may be used when this form is not adequate.

(iii) Form FmHA 441-25, "Assignment of Proceeds from the Sale of Dairy Products and Release of Security Interest," will be used for dairy products in which FmHA has a security interest under the UCC.

(iv) Form FmHA 441-18, "Consent to Payment of Proceeds from Sale of Farm Products," will be used for products or income, except dairy products, in which FmHA has a security interest under the UCC.

(v) Forms provided by ASCS will be used for assignments of disaster and regular agricultural program payments.

(4) In UCC states, an assignment of income constitutes a security agreement and should be treated accordingly.

§§ 1945.170-1945.172 [Reserved]

§ 1945.173 General provisions—compliance requirements.

(a) *Scope of operation to be financed.* Only family size farming operations may be financed with EM loans, subject to the eligibility requirements, loan amount ceilings, repayment ability, need, available security, and other provisions of this subpart.

(b) *Flood or mudslide prone areas.*

Flood or mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or mudslide prone areas as designated by the Federal Emergency Management Agency (FEMA). Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2) and Subpart G of Part 1940 of this chapter will be complied with when loan funds are used to construct or improve buildings located in such areas. This will not prevent making loans on farms where the farmstead is located in a flood or mudslide prone area and funds are not included for building improvements. The flood or mudslide hazard will be recognized in the appraisal report.

(1) In identified special flood or mudslide prone areas as designated by FEMA, the following policies are applicable for EM loans being made to finance buildings or fixtures and furnishings contained therein.

(i) If flood or mudslide insurance is available and an applicant has not taken such insurance and has suffered flood or mudslide losses, an EM loan may be made only if flood or mudslide insurance is purchased before the EM loan is closed.

(ii) If flood or mudslide insurance is available and an applicant previously received and still is indebted for an EM loan, Rural Housing Disaster (RHD), or SBA disaster loan; and a condition of the loan required the obtaining of flood insurance but the applicant allowed the insurance to lapse; and the applicant had new flood or mudslide losses, the applicant will be considered to be in default on the loan agreement and dealt with accordingly.

(iii) If flood and mudslide insurance is available and an applicant had previously received an EM, RHD, or SBA disaster loan; and a condition of the loan required obtaining flood or mudslide insurance and the applicant paid the loan in full and let the insurance lapse; the applicant will be handled in accordance with paragraph (b)(1)(i) of this section.

(iv) In those areas that have been designated by FEMA as special flood or mudslide hazard areas and flood or mudslide insurance is not available or has been withdrawn by FEMA, an applicant can receive an EM loan provided the farm buildings, including the dwelling, are relocated outside the 100-year flood area.

(v) EM loans to repair or replace farm buildings, including dwellings, must meet the requirements of § 1806.25 (a) or (b) of Subpart B of Part 1806 of this chapter (paragraph V A or B of FmHA Instruction 426.2) as applicable, or be

relocated outside the 100-year flood area.

(2) When land development or improvements such as dikes, terraces, fences, and intake structures are planned to be located in special flood or mudslide prone areas, EM loan funds may be used subject to the following:

(i) The Corps of Engineers or the SCS will be consulted concerning:

(A) Likelihood of flooding.

(B) Probability of flooding damage.

(C) Recommendations on special design and specifications needed to minimize flood and mudslide hazards.

(ii) FmHA representatives will evaluate the proposal and record the decision in the loan docket in accordance with the requirements of Subpart G of Part 1940 of this chapter.

(c) *Civil rights.* The provisions of Subpart E of Part 1901 of this chapter will be complied with on all loans made which involve:

(1) Funds used to finance nonfarm enterprises and recreation enterprises. Applicants will sign Form FmHA 400-4, "Assurance Agreement," in these cases.

(2) Any development financed by FmHA that will be performed by a contract or subcontract of more than \$10,000.

(d) *Protection of historical and archaeological properties.* If there is any evidence to indicate the property to be financed has historical or archaeological value, the provisions of Subpart F of Part 1901 and Subpart G of Part 1940 of this chapter will apply.

(e) *Environmental requirements.* See Subpart G of Part 1940 of this chapter for applicable requirements.

(f) *Real Estate Settlement Procedures Act.* The provisions of the Real Estate Settlement Procedures Act outlined in § 1940.406 of Subpart I of Part 1940 of this chapter apply when EM funds are used involving tracts of less than 25 acres if:

(1) Any part of the loan is used to purchase all or part of the land to be mortgaged, and

(2) The loan is secured by a first lien on the property where a dwelling is located.

(g) *Nondiscrimination requirements.* In accordance with Federal Law, the FmHA will not discriminate against any otherwise qualified applicant on the basis of race, religion, sex, national origin, marital status, age, or physical/mental handicap (provided the applicant can execute a legal contract), with respect to any aspect of a credit transaction. The policy statement set forth in § 1945.151(a) of this subpart will also apply to credit transactions.

(h) *Compliance with special laws and regulations.* (1) Applicants will be required to comply with Federal, State and local laws and regulations governing building construction; diverting, appropriating, and using water including its use for domestic or nonfarm enterprise purposes; installing facilities for draining land; and making changes in the use of land affected by zoning regulations.

(2) State Directors and Farmer Program Staff members will consult with SCS, U.S. Geological Survey, State Geologist or Engineer, or any board having official functions relating to water use or farm drainage requirements and restrictions for water and drainage development. State supplements will be issued to provide guidelines which:

(i) State all requirements to be met, including the acquisition of water rights.

(ii) Define areas where development of ground water for irrigation is not recommended.

(iii) Define areas where land drainage is restricted.

(3) Applicants will comply with all local laws and regulations, and obtain any special licenses or permits needed for nonfarm, recreation, specialized or aquaculture farming enterprises.

§ 1945.174 [Reserved]

§ 1945.175 Options, planning and appraisals.

(a) *Optioning land.* When purchasing real property an applicant is responsible for obtaining options in accordance with the provisions contained in § 1943.25 (a) of Subpart A of Part 1943 of this chapter.

(b) *Planning.* (1) A farm and home plan and Form FmHA 431-4, "Business Analysis-Nonagricultural Enterprise," when appropriate, will be completed as provided in Subpart B of Part 1924 of this chapter and in accordance with the FMIs. This planning process with the applicant is essential to making sound loans and, therefore, must receive careful attention in development of the loan docket. However, when the EM loan will be for not more than \$25,000, Tables A, D, and E of Form FmHA 431-2 may be left blank, and only the totals in Tables G and J should be shown, provided Form FmHA 410-1 is completed and accurately reflects the applicant's current circumstances, and no supervision is planned. The plan will show any major items of expenditure and the reason(s) these items are needed. When preparing a plan of operation, it is usually necessary to plan for a capital expenditure reserve during interim years and the typical year. Realistically, this will reflect the depreciating value of machinery,

equipment or other essential capital expenditure items, which it is prudent to expect will need to be replaced or require major repair. Also, all recurring and carry-over debts should be considered in a typical year plan. In addition, when all of the loan funds are not to be disbursed at loan closing, a *Monthly Budget* will be prepared showing the specific amount to be disbursed for each associated loan purpose for each month. The funds will be disbursed through use of the loan disbursement system (future advances) or, when determined necessary, through a supervised bank account.

(2) Development work will be planned and completed in accordance with Subpart A of Part 1924 of this chapter. Also, the provisions of Subpart E of Part 1901 of this chapter will be met in connection with EM loans involving recreational enterprises and the construction of buildings.

(c) *Appraisals.* (1) Real estate appraisals will be completed on Form FmHA 422-1, "Appraisal Report—Farm Tract", or Form FmHA 1922-8, "Residential Appraisal Report," for farm real estate or residential farm real estate, respectively, by an FmHA employee authorized to make farm appraisals, when real estate is taken as the primary security for the EM loan. The rights to mining products, gravel, oil, gas, coal or other minerals will be considered a portion of the security and will be specifically included as a part of the appraised value of the real estate securing the loans using Form FmHA 1922-11, "Appraisal Form for Mineral Rights." Appraisals are not required when:

(i) The amount of EM loan(s) plus any existing FmHA principal indebtedness is \$25,000 or less, and

(ii) The loan approval official determines the loan is adequately secured without an appraisal, and

(iii) The County Supervisor indicates in the loan docket an estimate of the market value of the real estate to be taken as security, and

(iv) The provisions of paragraph (c)(4) of this section are applicable.

(2) Real estate appraisals will be completed as provided in FmHA Instruction 422.1 (available in any FmHA office). However, the value of assets that secure EM loans associated with a disaster having any portion of its incidence period occurring on or after May 31, 1983, must be based on the higher of two appraisals; all of which must be made a part of the file. These appraisals will show:

(i) The asset value on the day before a State Governor's, Indian Tribal Council's, or an FmHA State Director's

first EM designation request, which is associated with the naming of one or more counties in a State as a disaster area where eligible farmers may qualify for EM loans; or

(ii) The asset value one year (365 days) before the date set in paragraph (c)(2)(i) of this section.

(A) The following types of real estate offered as collateral for securing EM loans will be appraised at the present market value only;

(7) Farm real estate the applicant/borrower did not own on the dates set forth in paragraph (c)(2)(i) and (ii) of this section.

(2) Real estate "not owned" by the applicant/borrower (for example, a relative if offering real estate as collateral for the proposed EM loan).

(3) A single family dwelling located on a nonfarm tract.

(4) Other types of real estate such as apartment houses and commercial buildings. The County Supervisor will request the assistance of the State Director in establishing the value of such real estate.

(B) Sales data utilized in the preparation of the necessary appraisals should conform to the dates set forth in paragraph (c)(2)(i) and (ii) of this section, to ensure a fair market value of the property is established. In addition, it should be confirmed that said sales resulted from reasonable sales efforts and that both the buyer and seller were willing, informed, and knowledgeable parties.

(3) When FLB stock is to be used in establishing the Recommended Market Value (RMV) of the real estate being appraised, see § 1945.169 (r)(1) of this subpart.

(4) When real estate is taken as additional security (for loans in which the primary security is subject to rapid depreciation or is of a high risk nature, such as crops), no appraisal report will be required for the additional security, provided the County Supervisor determines the security is adequate, and records the estimated value in the running case record, shows the date the property was inspected and certifies that in his/her opinion the estimates are correct based on knowledge of the value of the comparable assets in the area.

(5) Chattel appraisals will be completed on Form FmHA 1945-15, "Value Determination Worksheet," when chattels are taken as security. The property which will serve as security will be described in sufficient detail so it can be identified. Sources such as livestock market reports and publications reflecting values of farm machinery and equipment will be used

as appropriate. The value of assets that secure EM loans associated with a disaster having any portion of the incidence period occurring on or after May 31, 1983, must be based on the higher of two appraisals, all of which must be made part of the file. These appraisals will be based on the same information contained in paragraphs (c)(2) (i) and (ii) of this section. Chattels not owned by the applicant, and nonfarm chattel property offered as security (such as planes, house trailers, boats, etc.) will be appraised at the present market value only. Chattels that the applicant/borrower did not own on the dates set forth in paragraph (c)(2) (i) and (ii) of this section will be appraised at the present market value only.

(6) Abbreviated appraisals may be used and loans approved when:

(i) The loan approval official determines that the applicant's equity in the collateral will adequately secure the EM loan(s).

(ii) The abbreviated appraisals are prepared as follows:

(A) For real estate—Form FmHA 422-1, "Appraisal Report-Farm Tract," complete the heading of the report; Part 1, Item A; Part 2; Part 3; Part 6; Part 7 and Part 8. The report will be signed and dated by an FmHA authorized appraiser.

(B) For chattel property—Form FmHA 1945-15 will list, identify and show the value of each chattel item. This form will be completed, as applicable, on all EM loans.

§§ 1945.176-1945.179 [Reserved]

§ 1945.180 County Committee certification.

The County Committee will certify an applicant's eligibility on Form FmHA 440-2, "County Committee Certification or Recommendation," before each loan is approved. In some instances the committee may want to interview the applicant or see the farm before making any recommendations. Applications will be processed in accordance with § 1910.4(f) of Subpart A of Part 1910 of this chapter.

§ 1945.181 [Reserved]

§ 1945.182 Loan docket preparation.

(a) *Processing guide.* See Exhibit A of this subpart for Insured Emergency Loan Processing Guide. When a packager has developed the loan docket the County Supervisor will *fully analyze* the docket to assure it is complete and conforms with this EM loan regulation. The County Supervisor will *reverify calculations* in accordance with § 1945.183(a) and insure that the provisions of § 1945.183 of this subpart

are met before a final action is taken on the loan request.

(b) *Form FmHA 1940-1, "Request for Obligation of Funds."* A separate Form FmHA 1940-1 will be prepared for each EM loan which has a different interest rate and/or a different repayment period, as determined in accordance with § 1945.168 (a) and (b) of this subpart. Also, on Form FmHA 1940-1, for EM loans approved for borrowers presently indebted for an EM loan, but having new qualifying losses from a subsequent authorized disaster, the new appropriate disaster authorization number will be shown.

(c) *Promissory note.* A separate promissory note will be prepared for each Form FmHA 1940-1 used in approving and obligating each of the EM loans.

(d) *Lease agreement.* Generally, a copy of the lease agreement between tenant applicants and their landlords will be obtained and made a part of the loan docket. When a written lease is not obtainable, a statement setting forth the terms and conditions of the agreement, which are not clearly reflected on the farm and home plan, will be prepared and made a part of the loan docket.

§ 1945.183 Loan approval or disapproval.

(a) *Reverification before approval.* Before an EM loan is approved the following actions must be taken:

(1) A County Office employee will verify information provided by ASCS on all Forms FmHA 1945-29 in accordance with the FMI. If there have been any changes from the information originally provided and used in the loan docket preparation, appropriate changes will be made.

(2) A County Office employee will verify information provided by the Federal Crop Insurance Corporation (FCIC) regarding any insurance benefits which have been paid or will be paid. If there have been any changes from the information originally provided and used in the loan docket preparation, appropriate changes will be made.

(3) All calculations on Form FmHA 1945-22 and Form FmHA 1945-26 will be checked by a County Office clerical employee (either regular or temporary), using a calculator with a paper tape, to assure that mathematical errors are detected. The County Supervisor or designee will make any corrections necessary in the loan docket, when errors are located. The paper tape will be attached to Form FmHA 1945-22 or Form FmHA 1945-26 as appropriate.

(4) To prevent the duplication of benefits, FmHA and SBA have agreed to coordinate their respective EM and disaster loan program activities.

(i) The FmHA County Offices will notify the appropriate SBA Disaster Area Office of all EM disaster farm dwelling loss loan applications received each week for dwelling and/or household contents.

(ii) For dwelling and/or household content applications, the FmHA County Offices will send a copy of the final action taken to the appropriate SBA Disaster Area Office. Those actions include: Loan approval on Form FmHA 1940-1; notification of application withdrawal; notification of loan denial; confirmation of request for reconsideration or appeal of loan denial; and final determination on an appeal. *Copies of all written communications from FmHA County Offices to the SBA Area Offices will be sent to the State Director, Attention: Chief, Farmer Programs; and the District Director.*

(iii) Applicants who receive SBA physical disaster loans for dwelling and/or household content losses may also file for FmHA EM loan assistance based on farm losses other than to dwellings. In those cases where an FmHA loan can be approved, FmHA will either reduce the FmHA EM loan by the amount of the SBA loan (which may require SBA to subordinate its lien position(s)), or refinance the SBA loan by using EM loan funds to pay SBA directly. An EM loan will *not* be approved until it is determined that the requirements of § 1945.163(e) of this subpart will be met. When an EM loan is approved, the FmHA County Office will notify the SBA Disaster Area Office pursuant to paragraph (a)(4)(ii) of this section.

(b) *Administrative determination and responsibilities.* When the County Committee certification has been made and the reverification has been completed, and before approving the loan, the loan approval official will determine administratively whether:

(1) The County Committee has certified, in writing, that the applicant is eligible.

(2) The applicant has satisfactory tenure arrangements on the farm(s) to be operated.

(3) The proposed farm and home operations of the applicant are reasonably sound, the purposes are authorized, and the EM loan is needed.

(4) The proposed loan(s) shows a positive cash flow based upon a realistic farm and home plan.

(5) The security requirements can be met.

(6) The certification(s) required of the applicant have been made and are a part of the loan docket.

(7) The loan meets all other FmHA requirements

(8) The applicant has access to any additional financing needed to continue the farming operation. In making this determination, consideration will be given to whether the applicant qualifies for OL, FO and SW loan assistance, or for a loan(s) from other creditors with or without a FmHA subordination.

(c) *Loan docket transmittal to the Administrator.* (1) Transmittal memoranda accompanying EM loan dockets requiring National Office review/advice must set forth, as a minimum, the following information:

(i) Proposed loan(s), amount(s), rate(s), of interest, and term(s) of each loan.

(ii) Outstanding FmHA loan(s) balance(s) and the total proposed EM loan(s) indebtedness

(iii) Status of outstanding FmHA loan(s).

(iv) Brief statements regarding:
(A) Cause and type of disaster losses.
(B) Inability to obtain other suitable credit.

(C) Purposes for which loan funds are to be used.

(D) Overall feasibility and soundness of the planned operation.

(E) Property offered as security for the loan(s).

(v) The State Director's specific positive recommendation that the requested actions be approved.

(2) Loan dockets should not be forwarded to the National office for review of any action without the State Director's recommendation.

(d) *Loan approval.* (1) The loan approval official will date, sign and distribute Form FmHA 1940-1 in accordance with the FMI and set forth any special conditions of approval, including any special security requirements, in the appropriate section on Form FmHA 1940-1.

(2) The County Supervisor will complete Part III of Form FmHA 1945-29 and forward the form to the appropriate ASCS county office(s).

(e) *Loan disapproval.* The loan approval official must disapprove applications within the deadlines set out in § 1910.4 of Subpart A of Part 1910 of this chapter.

(1) The County Supervisor or loan approval official will notify the applicant by letter of the reason(s) for rejection and will advise the applicant in that letter of appeal rights as set out in Subpart B of Part 1900 of this chapter. The letter will also include any suggestions that could result in favorable action.

(2) The County Supervisor will complete Part III of Form FmHA 1945-29

and forward the form to the appropriate ASCS County Office.

(3) In areas where EM loans are being made under a *major disaster declaration*, and where the FEMA has advised the State Director that Section 408 grants are available, a list of applicants with physical losses, who do not qualify for EM dwelling and/or household content loss loans, will be prepared and sent to the FEMA by County Supervisors at the close of business each week. The State Director will be advised by the FEMA where to send the list and the State Director will so advise the County Supervisors. The list will be prepared in the following format:

UNITED STATES DEPARTMENT OF AGRICULTURE

Farmers Home Administration

TO: _____

The following is a list of applicants not qualifying for Farmers Home Administration's Emergency (EM) loans in _____ County during the week ending _____, 19____.

Name _____

Address _____

County Supervisor _____

§ 1945.184 [Reserved]

§ 1945.185 Actions after loan approval.

Loan funds must be provided by the County Office to the applicant(s) within 15 days after loan approval, unless the conditions prescribed in § 1910.6(d) of Subpart A of Part 1910 of this chapter are applicable. If a longer period is agreed upon by the applicant(s), the same will be documented in the case file by the County Supervisor.

(a) *Cancellation of loan check and/or obligation.* If, for any reason, a loan check and/or obligation will be cancelled, the County Supervisor will process the cancellation in accordance with the FMI for Form FmHA 1940-10 "Cancellation of U.S. Treasury Check and/or obligation." If a check received in the County Office is to be cancelled, the check will be returned through Concentration Banking System (CBS) as prescribed in FmHA Instruction 1951-B (available in any FmHA Office) or, if an office is not using CBS, returned to the Finance Office with an original of Form FmHA 1940-10 (See FmHA Instruction 102.1, a copy of which is available in any FmHA office).

(b) *Cancellation of advances.* When an advance is to be cancelled, the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA 1940-10.

(2) When necessary, obtain a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not necessary to obtain a substitute promissory note, the County Supervisor will show on Form FmHA 440-57, "Acknowledgement of Obligated Funds/Check Request," the revised amount of the loan and the revised repayment schedule.

(c) *Increase or decrease in loan amount.* If it becomes necessary to increase or decrease the amount of the loan before closing, the County Supervisor will request that all distributed docket forms be returned to the County Office for reprocessing, unless the change is minor and replacement forms can be readily completed and submitted. In the latter case, a memorandum to that effect will be attached to the revised forms for referral to the Finance Office.

§§ 1945.186-1945.187 [Reserved]

§ 1945.188 Chattel lien search.

See § 1941.63 of Subpart B of Part 1941 of this chapter for regulations concerning lien searches covering chattels.

§ 1945.189 Loan closing.

(a) *Closing loans secured by real estate.*—(1) *General.* Loans secured by real estate are considered closed on the date the mortgage is filed for record. Such loans will be closed in accordance with the applicable provisions of Part 1807 of this chapter (FmHA Instruction 427.1).

(2) *Security instruments.* Security instruments referred to in paragraph (a) of this section are real estate mortgages or deeds of trust.

(i) FmHA real estate mortgage or deed or trust Form FmHA 427-1 (State), "Real Estate Mortgage for _____," will be used in all cases where real estate is taken as security.

(ii) Promissory note(s) will be prepared and completed at the time of loan closing in accordance with the FMI. If insured Rural Housing (RH) funds are advanced simultaneously with EM funds the RH loan will be evidenced by a separate note on the proper form as provided in Subpart A of Part 1944 of this chapter. However, all notes will be described on the same security instrument(s). When a loan is closed between December 1 and January 1, the first installment will be collected at the time of loan closing.

(iii) When subsequent loans are made, a new security instrument is required

only when the existing instruments do not cover all required security or do not secure the subsequent loan.

(iv) A subsequent loan for any authorized purposes may be made without taking new security instruments when the existing security instruments cover all the property required to serve as security for the subsequent loan, the State law and the language of the existing security instruments will permit the future loan advance to be secured by the existing security instruments, and the existing security instruments will provide the same lien priority for the subsequent loan as for the initial loan. A new security instrument will be taken if any one of these requirements is not met.

(3) *Leaseholds.* Security instruments for loans secured by leaseholds will describe security in accordance with Part 1807 of this chapter (FmHA Instruction 427.1), and the following provisions will also apply:

(i) The following language, or similar language which in the opinion of the OGC is legally adequate, will be inserted just before the legal description of the real estate:

All Borrower's rights, title, and interest in and to the leasehold estate for a term of _____ years beginning on _____, 19____, created and established by a certain lease dated _____, 19____, executed by _____, as lessor(s), recorded on _____, 19____, in Book _____, Page _____ of the _____ Records of said County and State, and any renewals and extensions thereof, and all Borrower's right, title, and interest in and to said Lease, covering the following real estate:

(ii) An additional covenant will be inserted in the mortgage to read as follows:

Borrowers will pay when due all rents and any and all other charges required by said Lease, will comply with all other requirements of said Lease, and will not surrender or relinquish, without the Government's written consent, any of the Borrower's right, title, or interest in or to said leasehold estate or under said Lease while this instrument remains in effect.

(iii) A copy of the lease will be made part of the loan docket.

(4) *Filing or recording security instruments.* The following appropriate actions will be taken after loan closing:

(i) When the original security instrument is returned by the recording official, it will be retained in the borrower's case folder. When the original is retained by the recording

official, a conformed copy, showing the date and place of recordation and the book and page number, will be prepared and filed in the borrower's case folder.

A conformed copy of the security instrument will be sent to a prior lienholder if a substantial interest is held by that lienholder, or if it is required by a working agreement provision with that lienholder.

(ii) The original deed of conveyance, if any, and a copy of the security instrument will be delivered to the borrower.

(5) *Abstracts of Title.* Any abstract of title will be delivered to the borrower and Form FmHA 140-4, "Transmittal of Documents," will be prepared and a receipt obtained in accordance with the FMI. However, when an abstract is obtained from a third party with the understanding it will be returned, such abstract will be sent directly to the third party and a memorandum receipt will be obtained.

(6) *Requesting title service.* When the loan is approved, the County Supervisor will see that title service is requested in accordance with Part 1807 of this chapter (FmHA Instruction 427.1), if this has not already been done.

(7) *Fees.* The borrower will pay all filing, recording, notary and lien search fees incident to loan transactions from personal or loan funds. When FmHA employees accept cash for these purposes Form FmHA 440-12, "Acknowledgment of Payment for Recording, Lien Search, and Releasing Fees," will be executed. FmHA employees will make it clear to the borrower that any fee so accepted is only for paying fees on behalf of the borrower, and is not accepted as partial payment on a loan.

(8) *Supervised bank accounts.* If a supervised bank account is required, loan funds will be deposited following loan closing. Supervised bank accounts will be established in accordance with Subpart A of Part 1902 of this chapter. Loan funds not to be disbursed for specific purposes at loan closing and not needed within 30 days after closing, will not be requested until they are needed. The "Field Office Terminal System" will be used to request future advances at 30 day intervals or as needed. Only in unusual cases will loan funds be kept in supervised bank accounts for more than 60 days. When such funds are placed in an interest bearing supervised bank account, the interest earned will be applied on the EM loan immediately or

used for an authorized EM loan purpose, if the planned EM funds are not sufficient to cover all of the planned items.

(b) *Closing loans secured by chattels and crops.* See Subpart B of Part 1941 of this chapter.

(c) *Loan closing review.* Immediately prior to loan closing, the FmHA official responsible for closing the loan(s) will review the file for compliance with Agency regulations.

§ 1945.190 Revision of the use of EM loan funds.

(a) *Requirements.* Loan approval officials or their delegates are authorized to approve changes in the purposes for which loan funds were planned to be used, provided:

(1) The loan, as changed, is within the respective loan approval official's authority.

(2) Such a change is for an authorized purpose and within applicable limitations.

(3) Such a change will not adversely affect either the feasibility of the operation or the Government's interest.

(4) Such a change is approved in advance of the loan funds being used for the new purpose(s).

(b) *Additional authority.* The State Director may delegate additional authority to approval officials to approve certain kinds of changes in the use of loan funds by issuing a State Supplement describing such changes, provided prior approval is obtained from the National Office.

(c) *Revisions.* When changes are made in the use of loan funds, no revision will be made in the repayment schedule on the promissory note. Appropriate changes with respect to the repayment will be made in Table K of Form FmHA 431-2 (and, if needed, on Form FmHA 1962-1) and will be initiated by the borrower. The County Supervisor will also make appropriate notations in the "Supervisory and Servicing Actions" section of Form FmHA 1905-1, "Management System Card—Individual."

§ 1945.191 [Reserved]

§ 1945.192 Loan servicing.

Loans will be serviced under Subpart A of Part 1962 and Subpart A of Part 1965 of this chapter.

§ 1945.193-1945.199 [Reserved]

§ 1945.200 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575-0090.

4. Exhibits B and B-1 of this Part 1945, Subpart D are removed and reserved.

5. Exhibit D of Part 1945, Subpart D is amended in paragraph VIII by changing the reference "§ 1945.166(a)" to "§ 1945.168(b)."

R.R. Vautour,

Under Secretary for Small Community and Rural Development.

Dated: July 4, 1988.

[FR Doc. 88-17846 Filed 8-10-88; 8:45 am]

BILLING CODE 3410-07-M

Test Report Federal Register

Thursday
August 11, 1988

Part III

Department of Agriculture

Cooperative State Research Service

7 CFR Part 3400

Special Research Grants Program;
Administrative Provisions; Notice of
Proposed Rulemaking

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

7 CFR Part 3400

Special Research Grants Program;
Administrative Provisions

AGENCY: Cooperative State Research Service, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: Cooperative State Research Service (CSRS) proposes to amend its regulations relating to the administration of the Special Research Grants Program conducted under the authority of section 2(c)(1) of the Act of August 4, 1965, as amended (7 U.S.C. 4501(c)(1)). This action is being taken to modify the weight factors associated with the proposal selection criteria on the current Peer Panel Scoring Form under this program. These changes will facilitate the evaluation of applications and the award of project grants.

DATE: Comments concerning this proposed amendment are invited from interested individuals and organizations. To be considered in the formulation of a final rule, all relevant material must be received on or before September 12, 1988.

ADDRESS: Comments should be sent to Terry J. Pacovsky, Chief, Grants Administrative Management, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Washington, DC 20251-2200.

FOR FURTHER INFORMATION CONTACT: Terry J. Pacovsky at (202) 475-5024.

SUPPLEMENTARY INFORMATION:**Paperwork Reduction**

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the collection of information requirements contained in this proposed rule have been approved under OMB Document No. 0524-0022.

Classification

This proposed rule has been reviewed under Executive Order 12291 and it has been determined that it is not a major rule because it does not involve a substantial or major impact on the Nation's economy or on large numbers of individuals or businesses. There will be no major increase in cost or prices for consumers, individual industries, Federal, State, or local governmental agencies, or on geographical regions. It will not have a significant economic impact on competitive employment, investment, productivity, innovation, or on the ability of U.S. enterprises to

compete with foreign-based enterprises in domestic or export markets. In addition, it will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. No. 96-534 (5 U.S.C. 601).

Regulatory Analysis

Not required for this proposed rulemaking.

Environmental Impact Statement

This proposed regulation does not significantly affect the environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969, as amended.

Catalog of Federal Domestic Assistance

The Special Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the Final Rule-related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background and Purpose

Under the authority of section 2(c)(1) of the Act of August 4, 1965, as amended, the Secretary of Agriculture is authorized to make grants to carry out research to facilitate or expand promising breakthroughs in areas of the food and agricultural sciences of importance to the Nation to land-grant colleges and universities, research foundations established by land-grant colleges and universities, State agricultural experiment stations, and to all colleges and universities having a demonstrable capacity in food and agricultural research. The administrative regulations governing grant programs authorized by section 2(c)(1) are proposed to be changed as follows:

Section 3400.4(a)(2). CSRS proposes to change the deadline date from date of receipt to date of postmark. This proposed change will give applicants greater certainty with respect to the timeliness of their proposals.

Section 3400.4(c)(9). A substantial number of research proposals involve participation by outside individuals or organizations which is not described sufficiently in the proposal. We propose adding the section on collaborative arrangements to facilitate both the technical and administrative review of the proposal by requiring the proposal to clearly identify the performer of each task of the project, the commitment of

the party concerned to perform the task, and the proposed recipient of the award.

Section 3400.4(c)(12). This subsection is proposed to be revised to prohibit the use of grant funds under this program for the renovation or refurbishment of research spaces; purchase or installation of fixed equipment in such spaces; or for the planning, repair, rehabilitation, acquisition, or construction of a building or facility as mandated by section 1409 (a)(2) and (b)(1) of the Food Security Act of 1985 (7 U.S.C. 450i).

Section 3400.4(c)(13)(iii). CSRS proposes adding the section on laboratory animal care to ensure that uniform care and treatment of laboratory animals is practiced in all research projects supported by USDA.

Section 3400.10(a). We propose removing the paragraph that refers to the Federal Advisory Committee Act governing the establishment and operation of peer review groups because this requirement no longer applies to this program (7 U.S.C. 450i).

Section 3400.15(a). Several former peer panel members who have evaluated grant proposals under the Special Research Grants Program have written to USDA program officials stating that certain criteria used in the evaluation process contain higher weight factors than their level of importance merit; consequently, they have suggested that the criteria be combined, revised, or given lower weight factors. By proposing to alter the current weighting system, CSRS hopes to provide a more equitable method of evaluating and ranking research proposals submitted under this program.

List of Subjects in 7 CFR Part 3400

Grant programs—agriculture, Grants administration.

For the reasons set out in the preamble, Title 7, Chapter XXXIV, Part 3400 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3400—[AMENDED]

1. The authority citation for Part 3400 continues to read as follows:

Authority: Section 2(h) of the Act of August 4, 1965, as amended (7 U.S.C. 450i(h)).

§ 3400.2 [Amended]

2. In § 3400.2(j), the word "advise" is revised to read "advice".

3. Section 3400.4 is amended by redesignating paragraphs (c)(9) through (c)(15) as paragraphs (c)(10) through (c)(16), by adding new paragraphs (c)(9) and (c)(13)(iii), and by revising paragraphs (a)(2), (b), the heading of (c)(1), (c)(2), the first sentence of

(c)(11)(ii), the third through last sentences of (c)(12), paragraph (c)(13)(i), the last sentence of (c)(13)(ii), the third sentence of (c)(15), and (c)(16) to read as follows:

§ 3400.4 How to apply for a grant.

(a) * * *

(2) Deadline dates for having proposal packages postmarked;

(b) *Grant Application Kit.* A Grant Application Kit will be made available to any potential grant applicant who requests a copy. This kit contains required forms, certifications, and instructions applicable to the submission of grant proposals.

(c) *Format for research grant proposals.* * * *

(1) *Grant Application.* * * *

(2) *Title of Project.* The title of the project must be brief (80-character maximum), yet represent the major thrust of the research. This title will be used to provide information to the Congress and other interested parties who may be unfamiliar with scientific terms; therefore, highly technical words or phraseology should be avoided where possible. In addition, phrases such as "investigation of" or "research on" should not be used.

(9) *Collaborative arrangements.* If the proposed project requires collaboration with other research scientists, corporations, organizations, agencies, or entities, such collaboration must be fully explained and justified. Evidence should be provided to assure peer reviewers that the collaborators involved agree with the arrangements. It should be specifically indicated whether or not such collaborative arrangements have the potential for any conflict(s) of interest. Proposals which indicate collaborative involvement must state which proposer is to receive any resulting grant award, since only one submitting individual, corporation, organization, institution, agency, or other entity can be the recipient of a research project grant under one proposal.

(11) *Personnel support.* * * *

(ii) *Vitae of the principal investigator(s), senior associate(s), and other professional personnel to assist reviewers in evaluating the competence and experience of the project staff.*

(12) *Budget.* * * * A copy of the form which must be used for this purpose, along with instructions for completion,

is included in the Grant Application Kit identified under § 3400.4(b) of this part and may be reproduced as needed by proposers. Funds may be requested under any of the categories listed, provided that the item or service for which support is requested is allowable under applicable Federal cost principles and can be identified as necessary for successful conduct of the proposed research project. *No funds will be awarded for the renovation or refurbishment of research spaces; purchases or installation of fixed equipment in such spaces; or for the planning, repair, rehabilitation, acquisition, or construction of a building or facility.* All research project grants awarded under this part shall be issued without regard to matching funds or cost sharing.

(13) *Research involving special considerations.* * * *

(i) *Recombinant DNA molecules.* All key personnel identified in a proposal and all endorsing officials of a proposed performing organization are required to comply with the guidelines established by the National Institutes of Health entitled, "Guidelines for Research Involving Recombinant DNA Molecules," as revised. The Grant Application Kit, identified above in § 3400.4(b), contains forms which are suitable for such certification of compliance.

(ii) *Human subjects at risk.* * * * The Grant Application Kit, identified above in § 3400.4(b), contains forms which are suitable for such certification.

(iii) *Laboratory and animal care.* The responsibility for the humane care and treatment of laboratory animals used in any research project supported with grant funds provided by the Department rests with the performing organization. All key personnel identified in a proposal and all endorsing officials of the proposed performing organization are required to comply with the Animal Welfare Act (Pub. L. 89-544, 1966, as amended (Pub. L. 91-579, Pub. L. 94-279, and Pub. L. 99-198, 7 U.S.C. 2131 *et seq.*) and the regulations promulgated thereunder by the Secretary of Agriculture in 9 CFR Parts 1, 2, 3 and 4 pertaining to the care, handling, and treatment of vertebrate animals held or used for research, teaching, or other activities supported by Federal awards. In the case of laboratory animals used or intended for use in CSRS-administered research, the eligible institutions shall adhere to the principles enunciated in the *Guide for the Care and Use of Laboratory Animals*, described in NIH Publication No. 86-23 (Revised 1985), and to the USDA regulations and standards issued

under the public laws enunciated above. In case of conflict, the higher standard shall be used. In the event that a project involving laboratory animals is recommended for award, the proposer will be required to submit a statement certifying that the research plan has been reviewed and approved by the appropriate Institutional Animal Care and Use Committee at the proposing organization or institution.

(15) *Additions to project description.* * * * Each set of such materials must be identified with the title of the research project as it appears in the Grant Application and the name(s) of the principal investigator(s). * * *

(16) *Organizational management information.* Specific management information relating to a proposing individual or organization shall be submitted on a one-time basis prior to the award of a research project grant identified under this part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of forms recommended for use in fulfilling the requirements contained in this section are available upon request from the agency specified in this part.

4. Section 3400.7 is amended by revising paragraph (d)(3) to read as follows:

§ 3400.7 Use of funds; changes.

(d) *Changes in approved budget.* * * *

(3) involve transfers of amounts previously budgeted for training costs directly related to the research project;

5. Section 3400.8 is amended by revising the last item to read as follows:

§ 3400.8 Other Federal statutes and regulations that apply.

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

6. Section 3400.10 is revised as follows:

§ 3400.10 Establishment and operation of peer review groups.

Subject to § 3400.5, the Secretary will adopt procedures for the conduct of peer reviews and the formulation of recommendations under § 3400.14.

7. Section 3400.15 is amended by revising the selection criteria appearing in the peer panel scoring form under paragraph (a) and constructing a revised form as follows:

§ 3400.15 Review criteria.

(a) * * *

Peer Panel Scoring Form

* * * * *

II. Selection Criteria:

	Score 1-10	Weight factor	Score X weight factor	Comments
1. Overall scientific and technical quality of proposal.....		10		
2. Scientific and technical quality of approach.....		10		
3. Relevance and importance of proposed research to solution of specific areas of inquiry.....		6		
4. Feasibility of attaining objectives; adequacy of professional training and experience, facilities and equipment.....		5		

Score _____
Summary Comments _____

* * * * *

Done at Washington, DC, this 4th day of August 1988.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 88-18090 Filed 8-10-88; 8:45 am]

BILLING CODE 3410-22-M

FAST TRACK

Thursday
August 11, 1988

Part IV

Department of Transportation

Research and Special Programs
Administration

Department of Energy Application for
Inconsistency Ruling Concerning
Colorado Nuclear Materials
Transportation Act of 1986 and
Implementing Regulations; Public Notice
and Invitation to Comment

DEPARTMENT OF TRANSPORTATION

Research and Special Programs
Administration

(Docket No. IRA-44)

Department of Energy Application for
Inconsistency Ruling Concerning
Colorado Nuclear Materials
Transportation Act of 1986 and
Implementing Regulations**AGENCY:** Research and Special Programs
Administration, DOT.**ACTION:** Public notice and invitation to
comment.**SUMMARY:** The United States
Department of Energy (DOE) has
applied for an administrative ruling
determining whether the Colorado
Nuclear Materials Transportation Act of
1986 and the regulations issued
thereunder are inconsistent with the
Hazardous Materials Transportation
Act (HMTA), and the Hazardous
Materials Regulations (HMR) issued
thereunder and, therefore, preempted
under section 112(a) of the HMTA.**DATES:** Comments received on or before
September 23, 1988, and rebuttal
comments received on or before
November 10, 1988, will be considered
before an administrative ruling is issued
by the Director of the Office of
Hazardous Materials Transportation.
Rebuttal comments may discuss only
those issues raised by comments
received during the initial comment
period and may not discuss new issues.**ADDRESSES:** The application and any
comment received may be reviewed in
the Dockets Unit, Research and Special
Programs Administration, Room 8421,
Nassif Building, 400 7th Street, SW.,
Washington, DC 20590. Comments and
rebuttal comments on the application
may be submitted to the Dockets Unit at
the above address, and should include
the Docket Number, IRA-44. Three
copies are requested. A copy of each
comment and rebuttal comment must
also be sent to Mr. Lawrence H.
Harmon, Director, Transportation
Management Division, Office of Defense
Waste and Transportation Management,
U.S. Department of Energy, Washington,
DC 20585 and to Public Utilities
Commission, State of Colorado, 1580
Logan St., OL2, Denver, CO 80203, and
that fact certified to at the time
comment is submitted to the Dockets
Unit. (The following format is suggested:
"I hereby certify that copies of this
comment have been sent to DOE and the
Colorado PUC at the addresses specified
in the Federal Register.")**FOR FURTHER INFORMATION CONTACT:**
Edward H. Bonekemper, III, SeniorAttorney, Office of the Chief Counsel,
Research and Special Programs
Administration, 400 7th Street, SW.,
Washington, DC 20590, telephone 202-
366-4362.**SUPPLEMENTARY INFORMATION:**

1. Background

The HMTA (49 App. U.S.C. 1801 *et seq.*) at section 112(a) (49 App. U.S.C. 1811(a)) expressly preempts "any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement" of the HMTA or the HMR issued thereunder.

Procedural regulations implementing section 112(a) of the HMTA and providing for the issuance of inconsistency rulings are codified at 49 CFR 107.201 through 107.211. An inconsistency ruling is an advisory administrative opinion as to the relationship between a state or political subdivision requirement and a requirement of the HMTA or HMR. Section 107.209(c) sets forth the following factors which are considered in determining whether a state or local requirement is inconsistent:

- (1) Whether compliance with both the state or local requirement and the HMTA or HMR is possible (the "dual compliance" test); and
- (2) The extent to which the state or local requirement is an obstacle to the accomplishment and execution of the HMTA and the HMR (the "obstacle" test).

Inconsistency rulings do not address issues of preemption under the Commerce Clause of the Constitution or under statutes other than the HMTA.

In issuing its advisory inconsistency rulings concerning preemption under the HMTA, OHMT is guided by the principles enunciated in Executive Order 12612 entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of state laws only when the statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA, of course, contains an express preemption provision, which OHMT has implemented through regulations and interpreted in a long series of inconsistency rulings beginning in 1978.

2. The Application for Inconsistency
Ruling

On July 25, 1988, Lawrence H. Harmon, Director Transportation Management Division, Office of Defense Waste and Transportation Management, U.S. Department of Energy (DOE), filed

an application on behalf of DOE for an inconsistency ruling. That application specifically requested a finding that certain provisions of Colorado's regulations implementing the Colorado Nuclear Materials Transportation Act of 1986 (CNMTA) Article 2.2 of Title 40, Colorado Revised Statutes, 1984 Repl. Vol., as amended, be determined to be inconsistent with the HMTA and the HMR.

DOE alleges that the CNMTA and its implementing regulations apply to carriers transporting through Colorado highway route controlled quantities of radioactive material (HRCQ) as defined in 49 CFR 173.403(1). DOE states that it is the Federal agency responsible for radioactive materials transportation to which the Colorado Regulations pertain under the following applicability language:

* * * radioactive materials being transported to the waste isolation pilot plant in New Mexico and radioactive materials being transported to any facility provided pursuant to section 135 of the federal 'Nuclear Waste Policy Act of 1982', 42 U.S.C. 10101, *et seq.*, or any repository licensed by the United States Nuclear Regulatory Commission that is used for the permanent, deep, geologic disposal of high-level radioactive waste and spent nuclear fuel.

DOE contends that the Colorado regulations under the CNMTA are inconsistent with the HMR insofar as they impose information and documentation requirements, classify hazardous materials, impose training requirements, specify permit requirements and impose penalties and fees.

With respect to information and documentation requirements, DOE alleges that the following Colorado regulations exceed HMR requirements and, therefore, are inconsistent with the HMR:

(1) *NT-3(a)*, which requires that the telephone number of the Colorado State Patrol (CSP) be carried with the other shipping papers within the cab of every motor vehicle with instructions to the driver or person in charge of the vehicle to call that number in the event of any incident, accident, or breakdown of equipment;(2) *NT-5(c)(5)*, which requires that the original vehicle inspection report and any subsequent inspection report shall be retained in the vehicle while transporting nuclear materials within the State;(3) *NT-8(f)*, which requires that each person transporting nuclear material within the State shall carry in the motor vehicle a copy of a nuclear materials transportation permit issued by the Colorado Public Utilities Commission.

(4) Appendix 8-A to the Colorado rules, which requires that the permit applicant supply additional information in order to receive a permit, including:

a. A copy of the company's driver training program, which must describe preparation for mountain driving if the route to be traveled is mountainous;

b. Proof that the applicant has obtained liability insurance required by federal rules;

c. A nuclear incident plan that demonstrates applicant's ability to respond to a nuclear incident, which must include provisions for removal of the vehicle and its cargo, prevention or minimization of releases of radioactivity, and decontamination of the environment; and

d. The carrier's plan for replacement or repair of equipment that has been placed out of service by a Port of Entry or State Patrol officer after inspection or has been inoperative due to mechanical failure or other circumstance.

(5) *NT-9*, which contains prenotification requirements in excess of those required by the HMR.

In addition, DOE asserts that Colorado Rule NT-9 applies the Nuclear Regulatory Commission (NRC) regulation for prenotification of spent fuel shipments, 10 CFR 173.73(f), to all HRCQ shipments—instead of the less restrictive NRC regulation applicable to non-spent fuel HRCQ shipments. The

HMR (49 CFR 173.22) incorporates the NRC requirements. DOE contends that Rule NT-9 thereby establishes a classification of hazardous materials that impermissibly differs from that of the HMR.

In the area of training, DOE alleges that Appendix 8-A to the Colorado regulations constitutes an inconsistent training requirement. DOE argues that Appendix 8-A's requirement that each permit applicant supply a copy of the company's driver training program, which must describe preparation for mountain driving if the route to be traveled is mountainous, is inconsistent with 49 CFR 177.825.

Concerning Colorado's permit requirements, DOE argues that they are inconsistent because of their extensive information requirements and their vague and discretionary standards for determining when a permit may be issued. DOE cites the required submission of a nuclear incident plan that demonstrates the applicant's ability to respond to a nuclear incident as an example of a vague standard for permit issuance. DOE further contends that the permit requirements ban transportation of HRCQ in compliance with the HMTA and the HMR unless a permit is obtained and create the likelihood of diversion of transportation to other jurisdictions.

Finally, DOE contends that the Colorado regulations providing for civil penalties for violations of the regulations (Rule NT-4) and providing annual and single-trip permit fees (Rules NT-8 (c) and (e)) are inconsistent insofar as they relate to inconsistent regulations or support an inconsistent permit system.

3. Public Comment

Comments should be restricted to the issue of whether the requirements of the CNMTA or its implementing regulations are inconsistent with the HMTA or the HMR. They should specifically address the "dual compliance" and "obstacle" tests described above under "Background."

Persons intending to comment on the application should examine the complete application in the RSPA Dockets Branch, including the text of the CNMTA, the regulations issued thereunder, and the procedures governing the Department's consideration of applications for inconsistency rulings (49 CFR 107.201-107.211).

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

Issued in Washington, DC on August 5, 1988.

[FR Doc. 88-18220 Filed 8-10-88; 8:45 am]

BILLING CODE 4910-60-M

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes the need for transparency and accountability in financial reporting.

2. The second part outlines the various methods used to collect and analyze data, including surveys, interviews, and focus groups. It also discusses the challenges associated with data collection and analysis.

3. The third part presents the results of the study, showing the trends and patterns in the data. It includes tables and graphs to illustrate the findings.

4. The fourth part discusses the implications of the study for policy and practice. It suggests ways in which the findings can be used to improve the effectiveness of the program.

5. The fifth part concludes the document by summarizing the key points and providing a final statement on the importance of the study.

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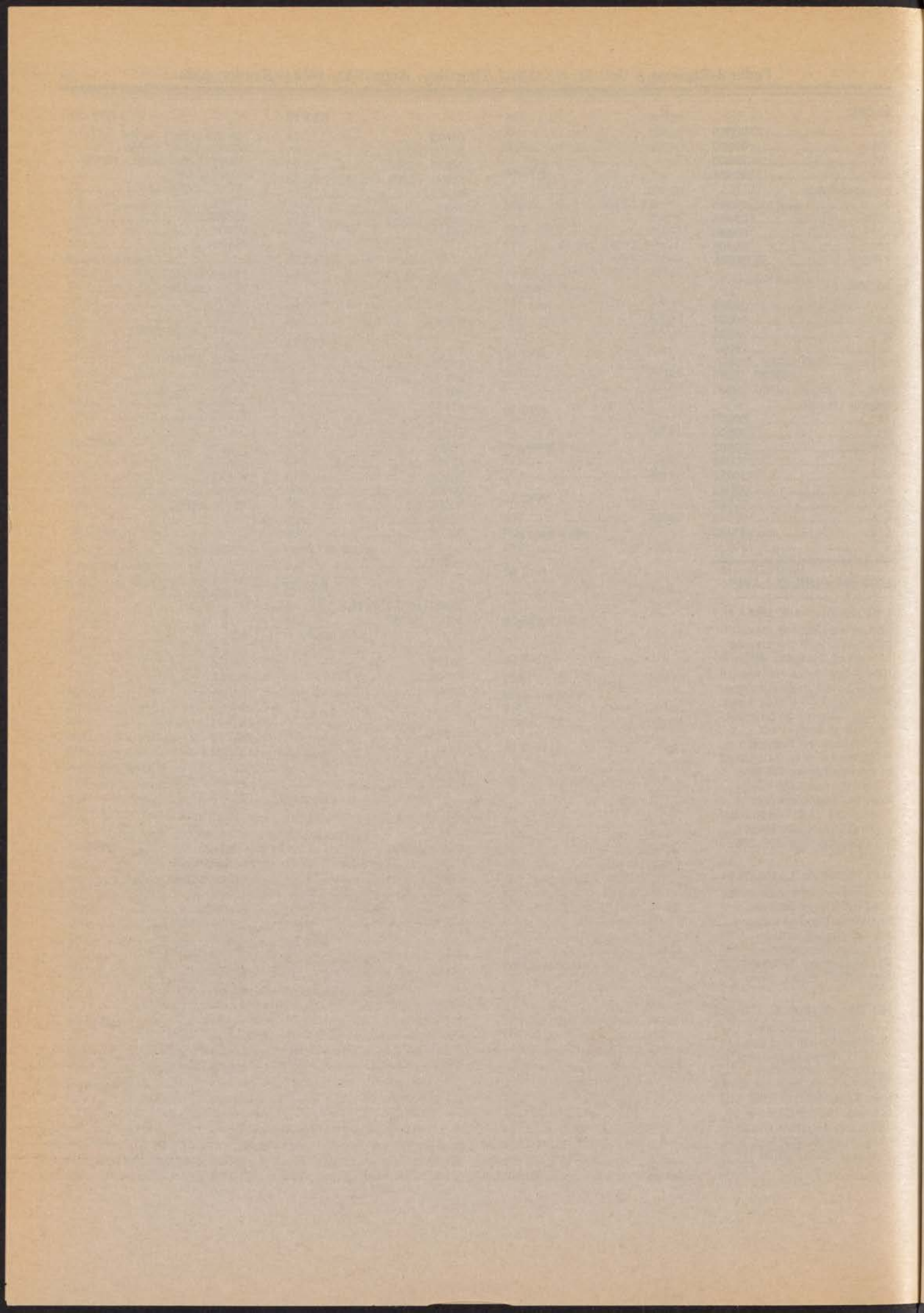
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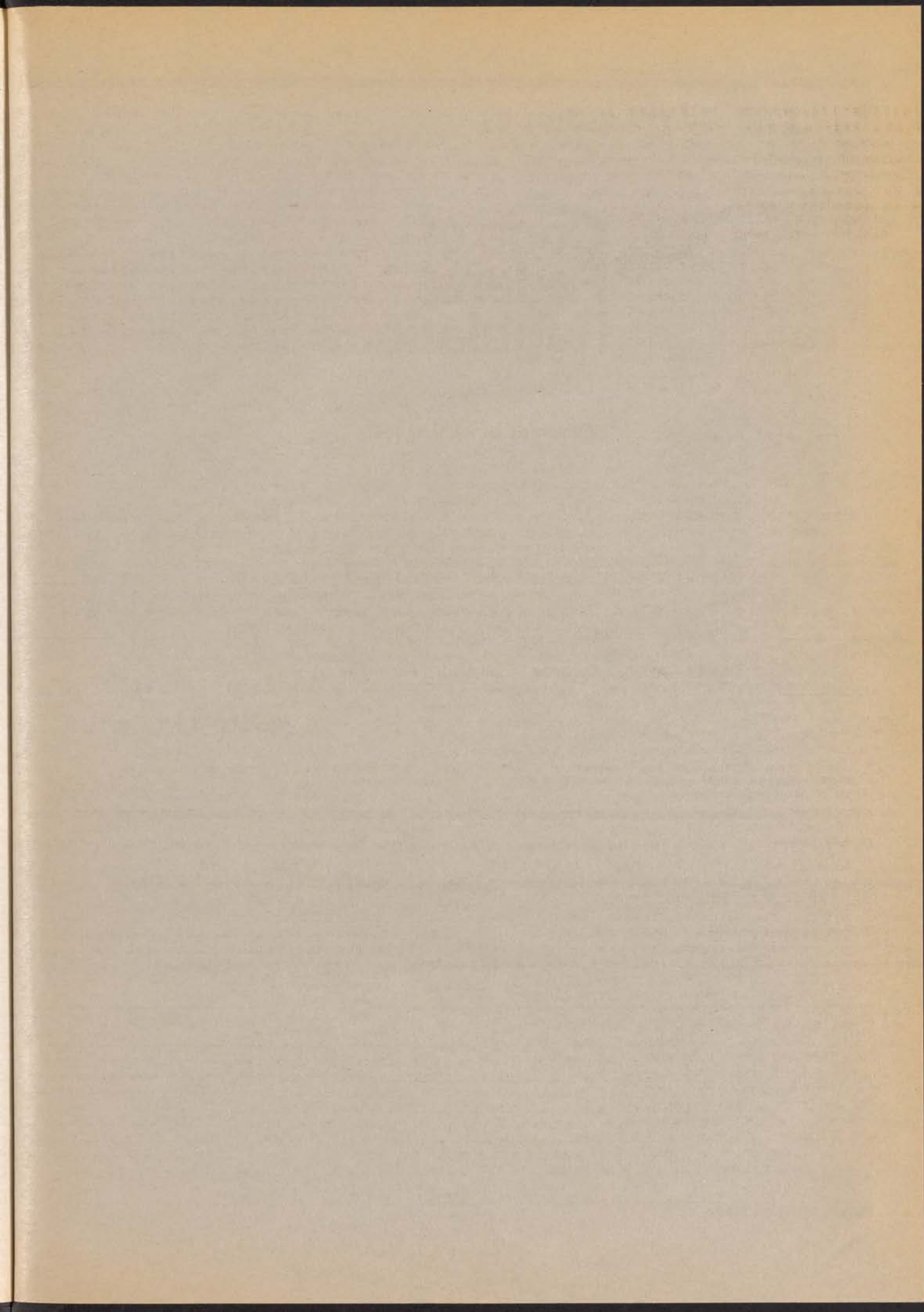
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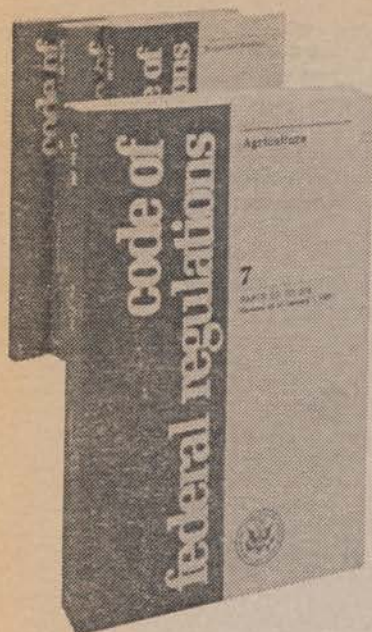
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To authorize and request the President to call and conduct a White House Conference on Library and Information Services to be held not earlier than September 1, 1989, and not later than September 30, 1991, and for other purposes. (Aug. 8, 1988; 102 Stat. 898; 5 pages) Price: \$1.00





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